OUR CULTURAL SOVEREIGNTY

The Second Century of Canadian Broadcasting

Standing Committee on Canadian Heritage

Clifford Lincoln, MP
Chair

House of Commons
CANADA

June 2003

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THE STANDING COMMITTEE ON CANADIAN HERITAGE

has the honour to present its

SECOND REPORT

Pursuant to Standing Order 108(2), your Committee studied the State of the Canadian Broadcasting System and reports its findings and recommendations.

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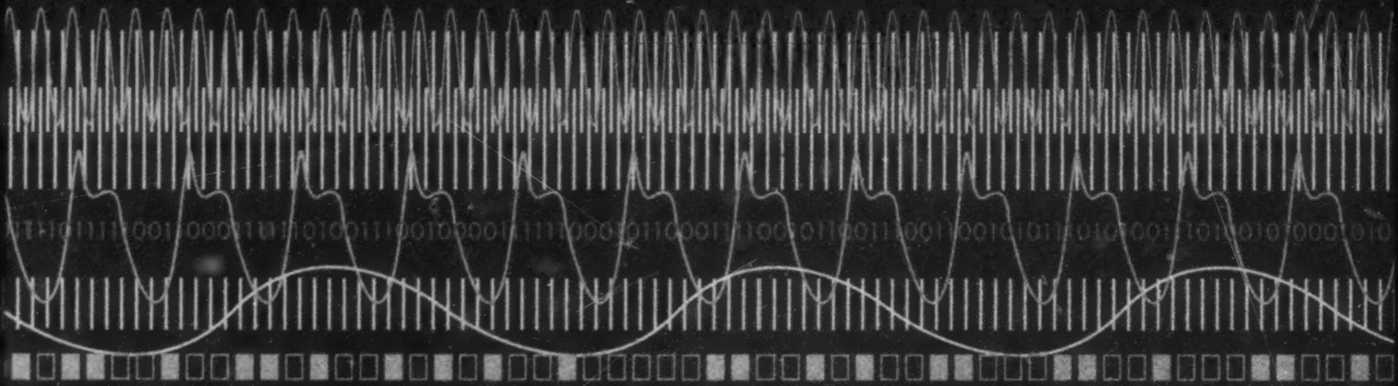
CHAIR'S FOREWORD



CHAIR'S FOREWORD

It has been 12 years since our current *Broadcasting Act* came into force. A judicious document, crafted with both vision and objectivity, it stemmed from the Caplan-Sauvageau Task Force on Broadcasting Policy, and the ensuing examination of that study by the then parliamentary Standing Committee on Communications and Culture. The Act has stood the test of time since its inception, and indeed its objectives are as valid today as they were then.

However, it is clear that even if the principles and objectives of the Act still hold their important meaning today, the broadcasting system and processes covered by the Act need urgent review. Broadcasting in all its forms, and the communications system which underlies it, have undergone an exponential transformation over the last decade. Technology in this field is in a constant state of ebullition, changing ever radically before our very eyes. Twelve years ago, for instance, at the time the *Broadcasting Act* became law, only a limited number of television channels were available from a few dominant broadcasting networks. Today we face the multi-channel universe, where a myriad of broadcasters compete fiercely for both space and viewer-loyalty. And meanwhile, in these short few years, the Internet has exploded on to the scene, commanding the attention of a huge and ever-increasing public, especially the younger generations. The cellular phone is now omnipresent, and soon the video cellular will become commonplace. Palm computers are another feature of daily life. And so much else in communication technology is happening at break-neck speed.

When our Committee first discussed the possibility of an in-depth study of the Canadian broadcasting system, the Minister of Canadian Heritage had thought coincidentally of assigning a similar mandate to an independent panel of expert advisors. The Committee members felt that a parallel study by outside experts would not only confuse the issue, but also depreciate the work of parliamentarians, subject as they are — in contrast to independent panels — to the inevitable delays and hiccups, as well as the budget constraints, of the parliamentary system.

We pointed out that, as had been the case following Caplan-Sauvageau, the parliamentary Committee would have to become involved in any event. Thus it would be both logical and empowering to involve the parliamentary process from the outset. Further, from the public's standpoint, parliamentary reports hold the distinct advantage of having to be tabled in Parliament, and to demand an official Government response within 150 days thereafter.

The Minister of Canadian Heritage having reacted very positively, it was decided to blend the two options, by assigning expert advisors to assist the Committee in its study. Thus it was that Professors Marc Raboy of l'Université de Montréal, and David Taras of the University of Calgary, who provided advice to the Committee and the team of Library of Parliament researchers led by Dr. Joseph Jackson.

Perhaps another paradoxical advantage of a parliamentary study, in contrast to one conducted by outside specialists, is that members of parliamentary standing committees are rarely expert in the subject at hand. Although this may appear to be a drawback at first glance, yet the parliamentary alternative offers the significant advantage of a diverse group of individuals who bring with them no preconceived notions and judgments as to both the problems and their possible solutions.

Supported by the substantial expertise at their disposal, members are able to probe and question without inherent bias or prejudice — and ensure the credibility of their recommendations by having to be all the more thorough and careful in making them.

This said, it would be unfair to exaggerate the positive aspects of the parliamentary committee process. It is a difficult and often frustrating one. Political parties obviously reflect their respective ideological values, which inevitably surface as issues are debated and reviewed. Even within the membership of any one party, individuals hold differing opinions and ideas, often very strongly. Thus consensus is not easy to achieve, when it is not actually elusive.

However, given these significant constraints and challenges, in the long run, consensus does develop. It may not be a consensus on all issues and recommendations — hence the logical inclusion of minority reports — but there remains an important degree of agreement nonetheless.

It may surprise readers to learn that in spite of the frustrations and delays of a vast exercise such as this one, a continuing atmosphere of harmony and mutual understanding has prevailed throughout. At no point can I recall, during our extensive discussions, anything but a civil and respectful sense of purpose, often laced with humour. It is a fact that parliamentary work in Committee is far more conducive to mutual understanding than the formal context of the House. In committee, we are not honourable members for this and that, but know one another by our own names, a positive starting point. In closed sessions, we call each other by our first names, another step toward a civil and friendly dialogue, despite differing opinions.

I would like to take this opportunity to thank all my Committee colleagues very warmly and specially for their cooperation and dedication, and for always having responded positively to what seemed impossible demands on their time.

My gratitude, which I express on behalf of the Committee, also goes to all the members of the research team led by Dr. Joseph Jackson, as well as to Professors Raboy and Taras. Their advice and participation were invaluable — indeed, our task would have been an impossible one without them.

I am most conscious that no study of this vast and delicate subject attracts unanimous support. Recommendations which may be viewed favourably by some, may be judged as very unhelpful by others. The intention here was not to seek general approval, but to attempt to be serious and credible, and as reasonably objective and fair in making recommendations as a diversity of human minds and opinions will allow. The individuals, institutions and corporations affected by our recommendations have without exception cooperated closely and positively at our hearings and throughout our study. Their interest has been constant, and keen. My warm thanks go to all of them. Though they represent very diverse viewpoints and often competing interests and objectives, we found in them professional competence and integrity such as to enable us to foresee bright horizons ahead for Canadian broadcasting and all those who serve it.

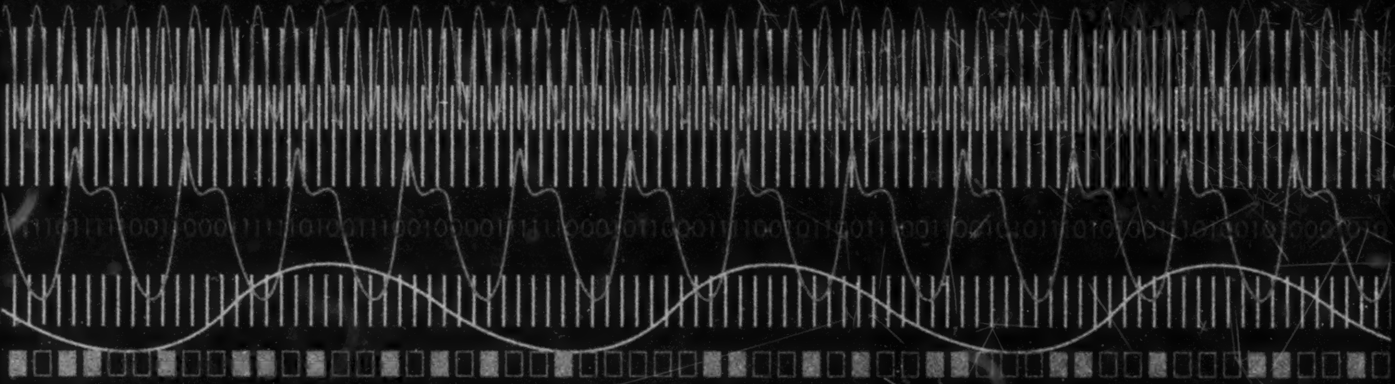
We have been fortunate as a Committee to count on an understanding and supportive Minister and Department of Canadian Heritage. Although ministry officials were very cooperative at all times and made available to us those reports and documents we sought, at no time did they try to guide or interfere in the slightest way. As to the Minister, she was ever encouraging but sensitive enough to always keep her distance, and allow us that full and essential measure of autonomy in our work. For this we are grateful.

Recognizing as we all did throughout the study, the magnitude and difficulty of the exercise, we were determined to make a sustained and special effort to achieve a credible report with meaningful recommendations. We are obviously not the most objective judges of our work. What we firmly hope is that our recommendations will be treated with the same seriousness with which they were debated, and made.

Part I

BACKGROUND

Chapter 1: Introduction
Chapter 2: Regulatory History
Chapter 3: The Evolution of Broadcasting Technologies
Chapter 4: Fragmenting Audiences



BACKGROUND

Chapter 1

Introduction

A. The Second Century of Canadian Broadcasting

On 10 May 2001, the House of Commons Standing Committee on Canadian Heritage announced that it would conduct a study of the Canadian broadcasting system. The Committee's aim was to determine whether the ideals and objectives set out in the *Broadcasting Act* of 1991 were being met and whether the Act itself was in need of reform. For almost two years the Committee traveled across the country hearing from broadcasting executives and stakeholders as well as ordinary Canadians who wanted to express their views. From the heads of large corporations in Toronto and Montreal to small producers in Moncton and Regina, from Aboriginal broadcasters from Northern Canada to the Raging Grannies in Vancouver, the Committee listened to testimony and experienced the broadcasting system on many levels. The Committee visited some of the sites where our broadcasting system's creators, producers, journalists, actors and distributors do their work. It also studied more than 200 briefs and submissions.

In its journey, the Committee was moved by the sense of pride and accomplishment that Canadian creators and producers feel in their work. It encountered a great many success stories — and will document some of these, in a series of vignettes throughout this report. The imagination, determination, talent and energy of those whom it met made an indelible impression. Our artists have pushed boundaries, taken chances and delivered their finest efforts to audiences and, indeed, the world.

The Committee also found that Canadians care deeply about their broadcasting system. Whether it was on the future of public broadcasting, the availability of local and community services or the prospects of foreign ownership, citizens expressed their views with great passion and eloquence. While for many of those who appeared before the Committee broadcasting is a livelihood, for most it is a window on the world and a way of knowing about and participating in their communities. For many if not most Canadians, broadcasting is important to their quality of life.

The terms of reference that the Committee developed for this study touched on a large number of topics and themes.[1] As its work proceeded, it became clear that the Committee would have to take a very hard look at the problems that trouble the system. The last time such an exhaustive examination of Canadian broadcasting was undertaken was in 1986, when the Task Force on Broadcasting Policy, co-chaired by Gerald Caplan and Florian Sauvageau, introduced its report in these terms:

> The Canadian broadcasting system has many strengths and virtues. Our task, however, is not to dwell on these. Formulating public policy is a matter of trying to make what already may be working well work better. That is why our mandate is to investigate the system, to understand its development, dilemmas and failures, in order to recommend ways and means for its improvement.[2]

This is the spirit in which the Committee has gone about its task. To do less would have been to shirk its responsibility. The Committee has had to make tough choices. The guiding principle that has motivated Committee members is that the broadcasting system must above all serve the interests of the Canadian people. This report will therefore advocate for greater responsibility, transparency and accountability, for a broadcasting system that reflects what is distinctive about Canada, its racial and cultural diversity, its multitude of expressions and values. It will seek to speak on behalf of the public, indeed, the multiple and diverse publics who cohabit this vast territory.

The Committee learned that Canadian broadcasting faces demanding times. Its institutions are struggling to meet the challenges of new technology, globalization, corporate convergence, and the high expectations of Canadians. Indeed, a number of circumstances have come together to form a disturbing pattern, with some representatives of the creative sector saying that there is a crisis in the production of English-language Canadian programming.[3]

The Committee is gravely concerned about the situation of public broadcasting. The CBC's audiences have plummeted over the last decade and the public broadcaster spends much of its talent and energy searching for the right formula, the right approach, to ensure its place in Canadian life. The search has been painful and frustrating and the goal distant and elusive. There is also cause for serious concern about the production and exhibition of English-language drama. Except in Quebec where audiences are entertained and invigorated by original, home-grown dramatic productions, American programming dominates the airwaves to an extent that is largely unknown and unimaginable in any other country outside of the United States itself.

Broadcasting at the community and regional level presents a further set of problems. Canadians seldom have the opportunity to see their own lives and communities reflected in non-news programming in the places where they live. As it traveled around the country the Committee heard compelling evidence about the large gap that exists between local and national programming. Lastly, there is serious uncertainty brought on by the advent of new digital technologies and their global reach. Satellites, the Internet and the personal video recorder (PVR) present new challenges for broadcasters. Applications of these new technologies might allow Canadian programming and advertising to be easily bypassed, disrupting conventional ideas about what constitutes broadcasting. Broadcasters may not have much time to adapt to these changes.

This situation plays itself out in different ways for broadcasters, creators and above all for the Canadian public which bears the cost of supporting the broadcasting system. The Committee believes that we have entered a new era in communication and culture, one that holds great promise but also great challenges. Old ways are quickly giving way to new ones and it is critical for government to be proactive, rather than reactive. In Canadian broadcasting's second century, we will have to find new ways to build on our achievements, to preserve and maintain what we have, while charting new objectives and new pathways. Reflecting our diversity will continue to be a basic goal and major challenge.

The Committee's approach is based on the recognition that it is necessary to emphasize the integrity of the broadcasting system as a whole. One of the most perceptive contributions the Committee received on this point came from the CEO of Astral Media, Mr. André Bureau, who described Canadian broadcasting as being made up of four key "pillars" (private broadcasters, public broadcasters, distribution undertakings and the independent production sector) and five "building blocks" (CRTC licencing, Canadian ownership, controlling entry of foreign programming services, Canadian content rules, and funding and tax incentives).[4]

In the Committee's deliberations over the last two years it became clear that all of these are connected, and that the Canadian broadcasting system can be likened to a complex machine where the breakdown of a single working part can threaten the functioning of the machine as a whole. The health of public and private broadcasters depends on the success of independent producers and on government funding mechanisms that are reliable and efficient. The success of programming depends on effective distribution networks. The loyalty of audiences is tied to their sense of place and belonging and whether or not their needs are being served. And the choices available to citizens depend on an effective regulatory framework.

In short, the objectives of the Canadian broadcasting system depend on maintaining a delicate balance. The witnesses who appeared before the Committee provided valuable insight into various aspects of the broadcasting system. Their testimony was often compelling and it was taken most seriously. Building on that foundation, the Committee's task has been to determine how the pieces of the puzzle fit together. It has sought to articulate a vision for the system as a whole, as well as for its individual parts. All stakeholders — and above all, the public — will benefit from a broadcasting system that is vigorous and resilient.

The Committee recognizes that the notion of "the public interest" can be a very slippery one. Writing about the CBC as early as 1946, political scientist J.E. Hodgetts stated that:

> It must be recognized at once that the 'public interest' is merely a convenient political hypothesis which will provide a sanction for state intervention and which will, at the same time, presumably create a standard against which government policy can be measured.

In short, there is an important trade-off here: governments can do just about anything provided they can demonstrate that it is in the public interest, but in order for what they do to be legitimate, the policies they put in place have to be measurable against some standard. A problem in Canadian broadcasting is the absence of adequate tools to determine whether our best-intentioned policy objectives are being met. Many of the Committee's recommendations will seek to address this problem.

B. The *Broadcasting Act* and the system's governing mechanisms

In some respects, and in keeping with its terms of reference, this study can be viewed as a report card on the health of the *Broadcasting Act*, which dates from 1991. The Committee has concluded that the Act itself needs few changes. It was finely and painstakingly crafted and reflects a consensus reached after a long and arduous consultation process — as the Committee was repeatedly told, the Act responds to the needs of Canadians.[6] While the Act needs some modest retooling — and the report will suggest places where changes can be made — it remains a viable instrument of public policy. The key issues revolve around how to carry out the *intentions* of the Act: issues such as how to promote Canadian content, how to ensure the key role of public broadcasting and a fair balance between public and private sectors, how to reinvigorate local and community programming, and so on.

The larger question is how well the institutions charged with implementing the Act have carried out their public trust and whether the spirit and indeed the letter of the Act are being adhered to. One cause for concern is that there is no mechanism in place to report regularly on the health of the broadcasting system and on whether the objectives of the *Broadcasting Act* are being met. In some cases, problems have been allowed to fester and deepen, while institutions and programs have lost their edge and effectiveness. The measures carried out under the auspices of the *Broadcasting Act* are supposed to ensure the defence and promotion of the public interest, yet no one has been in a position to question, raise issues and report back to Parliament and to Canadians on a regular basis about the state of Canadian broadcasting. The Committee will make a series of recommendations to address this problem, including the creation of a Canadian Broadcasting Monitor, whose role would be to report on the health of the Canadian broadcasting system.

Broadcasting involves a complex mixture of cultural and economic considerations and much of its success depends on effective and efficient regulation and government action. Through various instruments it has created (e.g., the CRTC, the CBC and the Canadian Television Fund) the government has a vital role to play in steering the system. The system's governing mechanisms, therefore, require close attention. Among other things, this report argues for major changes in the way that Canadian broadcasting is governed. In response to the numerous criticisms as well as the many suggestions for change that it heard, the Committee makes recommendations intended to streamline decision making, increase transparency, and make Canada's broadcasting system more open and accountable.

The Committee believes that the key to a more robust system is to put in place a series of checks and balances. These checks and balances will allow for more questions to be answered and prevent old and outmoded ideas and policies from hardening in place. A new dynamic will be created. No single institution will have unquestioned power and authority. The need for greater openness and responsiveness in public policy flows through this report, and lies at the heart of the Committee's recommendations.

C. Canadian Programming

Mr. Charles Dalfen, the Chair of the CRTC, has stated that "Drama is storytelling — and storytelling is close to the heart of human culture."[7] In the francophone market, Canadian-made dramatic productions have developed popular followings and are consistently among the top rated programs; this is not true in English-language television, where Canadian drama has been pushed to the margins of the broadcast schedule. Some witnesses asserted that the proportion of broadcasters' investments in Canadian dramatic programming and comedy have fallen, and that programs are being relegated to times of the day, days of the week and periods of the year when audiences tend to be smaller.

The problem is a complex one. English-speaking Canada shares a border, and a language, with the world's largest and most dominant producer of audio-visual programming. Canadians are constantly exposed to a mass media that endlessly promotes American shows and stars. American producers can sell programs at a price that is far below what it would cost to make similar shows in Canada. Canadian network programmers argue that American hits provide the revenue that allows the networks to invest in Canadian programs. This knot is not an easy one to untie and the Committee is not suggesting that the knot be untied so much as loosened. The goal must be to create more opportunities and more spaces, to strive for programs that are not only made-in-Canada but also made-for-Canada.

The Committee is heartened by the successes in other areas of Canadian broadcasting, particularly French-language drama, children's programming, documentaries, news and sports. The many successes of the past, the radio and television programs that have touched the hearts and stirred the minds of Canadian viewers and listeners and have been seen and heard across the world, prove that the highest mountains can be climbed.

The Committee believes that the CRTC's priority programming policy, which does not require broadcasters to air a specific amount of dramatic programming or earmark a certain amount of expenditures on original Canadian drama, needs to be revisited. The Committee also wishes to ensure that the Canadian Television Fund (CTF), a cooperative venture between industry and government and the linchpin for independent Canadian production, is preserved and strengthened. This inevitably means a greater public commitment and the guaranteed participation of industry stakeholders. Many witnesses complained about the fact that the various funds and government programs do not work well together. The Committee makes a number of recommendations to improve this situation.

The heart of the matter is that increased choice has raised the standard for what audiences want and expect. With competition for audiences having become so intense, programs will have to be innovative, captivating and imaginative to survive. Programs that are not exciting or interesting or excellent will not be watched. In this new environment the CTF and other programs that support Canadian programming are likely to be more important than ever.

D. Public and Not-For-Profit Broadcasting

This report contains data that show that many governments in the Western world continue to spend vigorously on public broadcasting. The reason for such expenditures is the realization in many countries that public broadcasting remains a vital instrument for promoting national values and identities. Public broadcasters create bridges that are essential for citizens and for democracy even if many of their programs are not commercially viable. Much of their budgets are spent on news and current affairs programming; they bring citizens together on important national occasions — the opening of Parliament, Remembrance Day, the handing down of the budget, the deaths of national leaders — and they serve and connect their societies in ways that are often intangible. Public broadcasters also have an obligation to reflect different parts of the countries and to reach even the most remote communities. In most of the industrialized world, public broadcasting is still considered the main instrument of public policy intervention in broadcasting.[8]

Why should Canada be different in this respect? Many commentators have viewed the CBC as an insurance policy. It is the last line of defence in a media system increasingly dominated by American programming and American values. It also plays a vital role in a system where there is increasing corporate concentration in the private sector. The CBC ensures that other voices can be heard. In Quebec and in francophone communities across the country, Radio-Canada is seen as a buffer against the domination of the English-language media. Yet as mentioned earlier the CBC has been seriously wounded in the last decade. Nearly two decades of budget cuts, the retreat from local and regional broadcasting, and the increase in competition from specialty channels that air programs that were once the preserve of the CBC have taken a heavy toll. The CBC's weakness has made it more vulnerable to critics. We need a public broadcaster that can do the job.

In its travels across the country, the Committee heard a great deal of testimony, much of it impassioned, about the valuable role played by the national public broadcaster. Clearly if the CBC did not exist, we would have to invent it. But there was much consternation in particular about the CBC's inability to serve local and regional audiences. In some parts of Canada, the CBC has been a lifeline that has connected communities and given those communities both their eyes and their ears. The Committee believes that CBC's national networks cannot be successful if local attachments and loyalties have been severed. Being present and visible at the crossroads of local life, being part of the everyday lives of citizens, may be the only way that the public broadcaster can reconnect with its public. There is an old saying in politics that all politics is local. The same might be said for public broadcasting.

A public broadcaster cannot be "all things to all people" and it may not be able to play the same role in every region of the country. The CBC may have to develop more of an asymmetrical strategy. Some of its services may not be as important in Toronto, which has a highly competitive radio and TV market, as they are in rural Quebec or Saskatchewan or

Newfoundland. It also has to ensure that it has a different tone of voice, that it tackles issues and pushes the edge in ways private broadcasters have little interest in doing.

While the Committee wishes to see stable and reliable funding for the CBC, it would also like to ensure that the CBC has the resources needed to reach Canadians in the communities where they live. A public broadcaster that is cut off from its roots cannot reflect the country well. The Committee is confident that increases in funding for the CBC and a proposal to create a new funding program to foster local and community programming initiatives — one of this report's boldest proposals — will make a difference.

The Committee believes that it is also important to acknowledge the special role played by Canada's other not-for-profit broadcasters. In a report prepared for the Committee, the distinguished journalist and scholar, Mr. Peter Desbarats, has observed that, "Over the years, Canada has seen the development of an extensive public broadcasting sector which, in terms of number of broadcasters and diversity of audiences, is probably without rival in any other country."[9]

Provincial educational broadcasters such as *Télé-Québec* and TV Ontario, international cooperatives such as TV5, the inter-faith broadcaster Vision TV, the public affairs channel CPAC and the Aboriginal Peoples Television Network are among the not-for-profit broadcasters that offer distinctive programming to Canadians. The Committee wishes to ensure that this unique part of our broadcasting system continues to thrive.

E. The Private Sector

The Committee believes that independent producers, private radio and television broadcasters, cable and satellite service providers and advertisers are a mainstay of the broadcasting system. Their vision, imagination and entrepreneurial spirit have taken the system to new heights, creating employment for tens of thousands of people and making Canada a leading exporter of television programs. During visits to private broadcasters and independent production companies across the country, the Committee was impressed by the energy, excitement and professional commitment, which motivated and inspired their work. Early morning and supper hour news shows, the creative spirit of story tellers on network television, street front TV, drive time and hot line radio, children's programming, the musical rhythms that stir our hearts and our souls on radio and the advertising that serves the interests of our business community are all part of the complex mosaic that is private broadcasting.

The Committee listened with great attention to concerns expressed by industry representatives. Issues that the Committee were asked to address included: the need to have funding programs that recognize and encourage new Canadian talent, the volume of paperwork and the bureaucratic logjams that make applying to funding programs confusing and exasperating, the utility of the MAPL criteria as a measure of Canadian music, the decline in the amount of Canadian advertising and the burden placed on the industry by Part II licence fees. The industry is also apprehensive about the impact of technological change. It is worried that increased fragmentation is making the size of audiences, advertising dollars and CTF funding much smaller than it once was. The digital transition, which will create new opportunities but will also involve new costs, looms on the horizon and must be addressed.

The Committee tried to address each of these concerns. It strongly endorses the value of the CTF and condemns the recent decision to lower the federal government's contribution to the fund. The Committee believes that the administration of all of the funding programs can be made more efficient and effective, and would like to see Canadian content requirements reviewed. It also calls on the government to take a closer look at the validity of Part II licence fees. The Committee recognizes that while the broadcasting industry enjoys the privilege of having access to the airwaves, airwaves that are in reality owned by the public, private companies contribute a great deal to the vitality of the broadcasting system and to Canadian life. The Committee recognizes that the money spent on Part II fees could also be spent on ensuring a successful digital transition and/or reinvigorating Canadian programming. It wishes to ensure that the government carefully examines this matter.

F. Community, Local and Regional Broadcasting

The Committee is concerned that community, local and regional broadcasting services have become endangered species, and that many parts of Canada are being underserved. In its travels across the country, the Committee heard from a surprising number of citizens who felt that they had been neglected and even abandoned by the broadcasting system. Although our larger cities are served by local stations that often do an excellent job of reaching out to and reflecting their communities — and some of the very best Canadian television can be seen in local breakfast and supper hour news shows — many smaller cities and municipalities have little or no comparable coverage. Private broadcasters go where they can make a profit and the CBC has, in reality, retreated from many localities and even from entire parts of the country. The Committee is aware of the special efforts that have been made by local cable operators to fill these gaps. But in some cases these efforts have been half-hearted and they are not enough to make a difference.

The harsh reality, as witnesses repeatedly reminded the Committee, is that local non-news programming seems to be almost non-existent. More often than not important cultural and civic events as well as local drama and comedy, sports, and music are not broadcast. An entire layer of Canadian life and experience is missing from the screen and the airwaves — and these forms of expression are arguably the places where the Canadian experience is the most original and vibrant, where the country discovers and defines itself.

The Committee recognizes that defining community, local and regional broadcasting is not an easy task. It is particularly difficult in a country where cities such as Montreal and Vancouver have larger populations than some provinces and where there are many contending notions about what constitutes a community. Where does one community leave off and another begin? How does local broadcasting differ from regional broadcasting? Can all of Canada's many regions be served equally?

Although the *Broadcasting Act* explicitly recognizes community broadcasting as one of the components of the broadcasting system, what exists is a patchwork of different services that vary widely from community to community and from one part of Canada to another. The Committee calls on the government to devise a new strategy so that at least some of these critical gaps can be filled. The Committee also believes that there has to be a decisive break with the past. It is recommending a new funding program that would empower local communities and enable the creation of key partnerships between local and community groups and broadcasters. It would give a voice to those communities that feel that they have been abandoned.

G. Ownership

The question of media ownership was perhaps the most emotional and contentious issue that the Committee had to address. A series of hearings focused on whether the current limits on foreign ownership should remain in place and whether cross-media ownership should be allowed. Regarding foreign ownership, the Committee is convinced that the best interests of Canadian citizens and the reflection and fostering of our talents and imaginations cannot be left to foreign interests. The danger is that Canadian companies would be maintained as satellites within the larger orbit of foreign corporations and vital financial and creative decisions would be made in New York, Paris or Los Angeles rather than in Montreal, Winnipeg or Toronto. The Committee believes that the permissible degree of foreign ownership should be maintained at current levels and that sometimes, in the words of the American poet Robert Frost, "Good fences make good neighbors."[10]

The Committee is also strongly concerned about corporate concentration in Canadian media industries and the problems associated with cross-media ownership — which have recently reached record levels unequalled in comparable jurisdictions. While the Committee recognizes that size does matter in terms of achieving economies of scale and that Canadian broadcasters need the capacity to compete against giant foreign conglomerates, it sees journalistic independence as being critical to the health and safeguarding of our democratic system. Our society suffers when fewer voices are heard. Citizens need to have access to a rich mix of information and opinion, and to the values and beliefs of others, if we are to build a better future.

Several witnesses told the Committee that it had to address this situation despite the apparent *fait accompli* of convergence, consolidation and concentration. The Committee's dilemma was how to recommend action to ensure that citizens can have access to a variety of viewpoints, without throwing the Canadian media industry into financial turmoil. The chapter on ownership lays out a number of possibilities and recommends that the government issue a clear and unequivocal policy statement concerning cross-media ownership. In the interim, the Committee recommends that the CRTC should be directed to postpone decisions on the awarding of new broadcast licences involving cross-media ownership. It also recommends that existing licence renewals that involve cross-media ownership be automatically extended (i.e., an administrative renewal) for a minimum of two years and a maximum of three years. Finally, the chapter asks the government and the CRTC to develop clear and firm policies to ensure that newsroom independence is maintained and that no handful of large corporations can dominate either the local or national media landscape.

H. Envisioning the Future

A challenge for the Committee was the rapid and extraordinary change that was taking place during its study. Broadcasting is entering a new frontier. Structures and formulas that worked in the past, and are the glue that holds much of the system in place, are being challenged by the brutal and unrelenting force of technological change. But technology can and must be harnessed and put to work for people. Much of this report is devoted to the opportunities and challenges that the broadcasting system faces in an age of digital technology and new media.

This report describes the technological innovations that have been used to shape Canadian broadcasting, from the harnessing of the electromagnetic spectrum to the fragmentation of audiences brought about by cable and satellite services, and the advent of new digital channels and "streaming" media. Uses of each technology have had a powerful impact on the broadcasting industry, government policies and on the choices available to Canadians. It is important to note, however, that the introduction of a new medium does not necessarily mean the extinguishing of the old. Older media such as radio, film and newspapers did not disappear with the arrival of television. They were reinvented with new formats and approaches. Similarly, new platforms such as the Internet and technologies such as personal video recorders are likely to be used in ways that will reshape Canadian broadcasting. The Committee believes that the government has a role to play in promoting the health of the broadcasting system as the industry adjusts to these dramatic changes.

The problem of grey and black satellite markets may be emblematic of the kinds of issues that are being brought about by the introduction of new technologies. With all of the investments in programming and all of the regulations that have been put in place to promote Canadian culture, hundreds of thousands of viewers (by some estimates a number greater than the entire population of New Brunswick) bypass the Canadian broadcasting system by accessing American satellite services directly. They have, in effect, been able to opt out of Canada at least for the purposes of television reception. The loss in advertising dollars and subscription fees substantially reduces funding support for Canadian programming. Sealing the border against the reception of unauthorized satellite signals, if not altogether impossible, is especially difficult when many citizens see access to American signals as a civil and individual right.

The problem of borders is compounded by the new culture of the Internet. The Internet is a vast and in some ways a limitless ocean. While the case can be made that the video streaming that takes place on the Internet does not involve the broadcasting of programs, and hence is not broadcasting in the conventional sense, the reality is that all media are converging on the Internet. Radio, newspapers, games, electronic mail, libraries, music and now movies are all available online. Hollywood studios are experimenting with ways to allow subscribers to download films directly. While these delivery systems are still in their infancy, one can envision a not-so-distant time when producers will have the capacity to bypass the television networks and distributors to reach viewers directly. Even a small chipping away at audiences can have a dramatic impact on the broadcasting system.

It is also important to remember that Internet use has helped create a new culture, particularly among young people. The sheer vastness and richness of their media experiences separates them from previous generations. The Internet has become a basic tool for communicating with friends, for home entertainment and for learning about their country and the world. They can attend online concerts, shop at their favourite stores, live and play in simulated environments and meet people from across the globe on a daily basis. When asked by survey researchers to make a choice between having a computer and having a television, a high proportion of young people would choose to keep their computers.[11]

The introduction of the personal video recorder illustrates another way uses of technology can change the business equation in dramatic ways. PVRs can store hours of programming on a hard disk. Viewers can record an entire series, bypassing network schedules and dispensing with commercials entirely. The experience in the more than one American million homes that already have PVRs is that viewers tend to watch what is on the machine rather than what is on television. PVRs will allow viewers to customize their viewing by creating personalized viewing schedules. The next generation of PVRs will allow viewers to trade files by e-mailing programs to one another. Existing concepts of television viewing will change.

Much of the report attempts to look at the new environment that is rapidly approaching. The question of Internet broadcasting, the need for Canada to plan for the digital transition, the pressing issue of the grey and black satellite markets, the problems associated with copyright and the initiatives that are being taken to develop new instruments of international cooperation are all dealt with in separate chapters.

The convergence of technologies has created another set of issues for governments. Governments must ask whether their current legislation and administrative structures correspond to the new realities. The United Kingdom, for instance, has just introduced a *Communications Act* that recognizes that broadcasting and telecommunications can no longer be viewed as distinct and self-enclosed worlds. In Canada, there are separate acts governing telecommunications, broadcasting and the CRTC and two government departments, Canadian Heritage and Industry, share jurisdiction over different aspects of broadcasting. The Committee thought long and hard about whether these divisions still make sense and recommends that the government take action.

I. Our Cultural Sovereignty

The sheer power of broadcasting and its important role in cultural sovereignty can be seen in the reports of numerous commissions and study groups. The 1986 Task Force on Broadcasting Policy noted that a single television program can be viewed by more people in one evening than will watch the top grossing Canadian films, or attend all of Canadian theatre, during an entire year. The 1996 Mandate Review Committee on the CBC, NFB and Telefilm, pointed to an even starker reality: by the time Canadian children reach age 12, they will have spent more time watching television than they will have spent in school. As the Mandate Review Committee noted: "Schools may be educating our children. But for better or worse, it's television that's teaching them."[12]

Even with the advent of the Internet and the challenges that it poses to the traditional broadcasting system, broadcasting remains the principal vehicle for communicating about culture and identity. There are studies that show, for instance, that Internet use does not necessarily affect the amount of time that young people spend watching television or listening to radio as much as it affects sleep and time spent with family members.[13] In fact, the old media — its stars and celebrities, its programs and the issues that it highlights — dominate much of what attracts people on the Internet.

In its travels, the Committee encountered many Canadians who have a passionate belief in our country and its future. Our broadcast executives, creators, artists and journalists and most of all the ordinary citizens who are the lifeblood of the broadcasting system expressed feelings of great pride. The Committee was uplifted and heartened by the sheer talent, enterprise, imagination and courage of so many of the people that it met.

The record shows that there now exists a sophisticated and confident public that has developed a growing appetite for Canadian culture — books, music, theatre and art — and that our accomplishments are now increasingly being recognized around the world.[14] Thanks in part to Canadian leadership in the global quest for a new international instrument on cultural policy — which the Committee supports — Canada has become an example to others.

This report argues that fundamental changes have to be made to provide Canadians with the television, radio and new media services that they want and expect. While Canadians have the desire to see, hear and express themselves through broadcasting, funding deficiencies, bureaucratic logjams, a lack of transparency and accountability, the advent of new technologies and a rapidly changing global environment have created a series of great challenges. The architects of the Canadian broadcasting system successfully overcame similar obstacles in the past. We have always been able to respond with acts of will, with bold steps, that ensured that spaces for Canadian talent and expression continued to exist. Creating and maintaining these spaces is now more important than ever. The times demand new acts of will, a new vision and determination, to serve the interests of the Canadian public. Our future depends on finding the strength to act.

J. The Committee's Report

This report is broken down into four parts. The first section describes the impact made by regulatory history and technological changes and the challenges and achievements of the broadcasting system. The second section reports on the state of the system. Here the issues facing the different components of the broadcasting system are described in considerable detail: the complex arena of Canadian programming, the problems faced by public and not-for profit broadcasters, the health of community, local and regional broadcasters, the achievements and struggles of the private sector, the special challenges facing northern and Aboriginal broadcasters.

A third section entitled "Maintaining a Single System" begins with the crucial question of ownership. It then focuses on the challenges presented by new technologies and the digital revolution. Issues surrounding copyright, Internet regulation, accessibility, the black and grey satellite markets and initiatives to protect and enhance Canada's cultural sovereignty internationally and cultural diversity are all dealt with. Here the emphasis is on the need to take steps that will position Canada for the future.

The final section deals with the role that government and the institutions it creates can play in guiding the broadcasting system. Here the emphasis is on proposed reforms that will create checks and balances, spur change, create greater accountability and represent the public interest.

In the end, we need a healthy and financially viable broadcasting system that reflects and enhances our daily experience, that promotes education and dialogue, and that stirs our hearts and imaginations. Most of all we need a broadcasting system that allows us to see, hear and be ourselves. The 1965 Fowler Committee on Broadcasting saw broadcasting as the most powerful mirror and creator of the Canadian experience. It proclaimed:

> When we declare that broadcasting should be a major instrument for the development of a distinctive Canadian culture, we use that most abused word "culture" in its broadest and original meaning. It is the reflection of life itself, in all its variety — its beauty and ugliness; its significant artistic achievements and its unimportant daily occurrences; its big people and its little people; its important and often inscrutable messages, and its light insignificant interests; its great opinions and its amusing anecdotes; tragedy and comedy, laughter and tears, criticism, irony, satire and sheer fun and amusement — are all essential.[15]

In its best moments Canadian broadcasting reaches these heights. The Committee would like to ensure that broadcasters have the tools that they need to meet such high expectations and that all Canadians have a broadcasting system that serves and reflects their interests.

Endnotes

[1] See Appendix 1.

[2] Report of the Task Force on Broadcasting Policy (Caplan-Sauvageau) (Ottawa: Minister of Supply and Services Canada, 1986), p. 5.

[3] See, for example, Mr. Thor Bishopric, President, Alliance of Canadian Cinema, Television and Radio Artists, Meeting of Standing Committee on Canadian Heritage, 9 May 2002.

[4] Astral Media, Site Visit, 3 May 2002.

[5] J. E. Hodgetts, "Administration and Politics: The Case of the Canadian Broadcasting Corporation," *Canadian Journal of Economics and Political Science* (1946): 454-469.

[6] See, for example, Canadian Association of Film Distributors and Exporters; Association québécoise de l'industrie du disque, du spectacle et de la vidéo; Association des producteurs de films et de télévision du Québec; Association des réalisateurs et des réalisatrices du Québec; Société des auteurs de radio, télévision et cinéma; Société professionnelle des auteurs et des compositeurs du Québec; and Union des artistes, "Maîtriser notre espace pour contribuer à la diversité culturelle," Brief.

[7] Address to the Canadian Association of Broadcasters' Annual Conference, Vancouver, 22 October 2002, www.crtc.gc.ca.

[8] See, for example, McKinsey & Company, *Comparative Review of Content Regulation: A McKinsey Report for the Independent Television Commission* (London, U.K.: Independent Television Commission, 2002). According to this report, in most European countries, the prime mechanism for influencing broadcasting content is still the funding of one or more public service broadcasters, "mandated to deliver key aspects of quality and diversity to the national audience and to selected audience segments." www.itc.org.uk.

[9] Peter Desbarats, "The Future of Public Broadcasting: Distinction or Extinction", Report to the House of Commons Standing Committee on Canadian Heritage, August 2002, p.13.

[10] Robert Frost, *North of Boston* (New York: Henry Holt and Company, 1915); Bartleby.com.

[11] Edison Media Research, "The Need for Speed," www.edisonresearch.com.

[12] *Making our Voices Heard: Canadian Broadcasting and Film for the 21st Century*, Report of the Mandate Review Committee, Department of Canadian Heritage, 1996, p. 60.

[13] "Survey: Television", *The Economist*, 11 April 2002, p. 2.

[14] Desbarats, p. 37-42.

[15] Report of the Committee on Broadcasting (Fowler Committee) (Ottawa: Queen's Printer, 1965), p. 4.

BACKGROUND

Chapter 2

Regulatory History

Since the earliest days of Confederation, Canada's vast size, long winters and fragmented population have necessitated a well-developed communications network. At first it was the printed word and the railways that helped serve this function. Later, the telegraph and the telephone were added. In the early years of the twentieth century it was radio, followed in the 1950s by television, and since the mid-1990s, the Internet. Over time, Canada's broadcasting system has become one of the principal ways through which Canadians have developed a sense of community and identity. In parallel, Canada's broadcasting infrastructure has become a multi-billion dollar industry, offering valuable opportunities for tens of thousands of Canadians in countless areas of the broadcasting, telecommunications and technology sectors.

A strong point of the Canadian broadcasting system is the elaborate physical infrastructure its trustees have developed to deliver radio and television services to potential audiences. Its weakness has always been the amount of original Canadian programming written and produced by Canadians, for Canadians.

Some have argued that the absence of adequate Canadian programming combined with the pervasiveness of the popular American variety represents a force that undermines Canadians' social, cultural, economic, public and national interests. This is why successive governments for more than 70 years have developed and funded a national public broadcaster, an independent production industry and an arm's-length regulator to oversee the practices and activities of those who deliver our programming services.

The introduction of radio created at least as much and perhaps more excitement than the development of railroads. It was now possible for communities to share information across vast distances without having to worry about the state of the roads, the railroads or the weather. All that was needed was electricity — a crystal in the early days — and, later on, a four or five tube radio set.

From the beginning, the benefits of broadcast programming were imagined to be considerable. Indeed, the Aird Commission of 1928-29 believed that:

> ... broadcasting should be considered of such importance in promoting the unity of the nation that a subsidy by the Dominion Government should be regarded as an essential aid to the general advantage of Canada rather than as an expedient to meet any deficit in the cost of maintenance of the service.[1]

It also observed that:

> ... the potentialities of broadcasting as an instrument of education have been impressed upon us; education in the broad sense, not only as it is conducted in the schools and colleges, but in providing entertainment and in informing the public on questions of national interest.[2]

Thus, education, information, entertainment and national unity were the core reasons why Aird's Commission recommended the creation of a national public broadcaster. And it is these same motivations that have informed every Canadian review that has considered broadcasting since that time.

For example, in 1932, Prime Minister R.B. Bennett spoke of an:

> ... enduring fellowship ... founded on the clear and sympathetic understanding which grow out of closer mutual knowledge. In this stage of our national development, we have problems peculiar to ourselves and we must reach a solution ... through the employment of all available means. The radio has a place in the solution ... It becomes, then, the duty of Parliament to safeguard in such a way that its fullest benefits may be assured to the people as a whole.[3]

Similarly, in 1951, the Royal Commission on National Development in the Arts, Letters and Sciences (known as Massey-Lévesque) concluded that:

> In Canada ... the principle that radio broadcasting is a public trust has been followed consistently for twenty years [therefore] broadcasting in Canada, in our view, is a public service directed and controlled in the public interest by a body responsible to Parliament.[4]

Nearly 20 years later, in 1970, the Special Senate Committee Report on Mass Media agreed that:

> ... broadcasters [use] public property in transmitting their signals through the air, and ... Canadians [have] a right to expect that

> broadcasters [will use] that public property to strengthen our culture, rather than dilute it.[5]

This view was reaffirmed by the 1986 Task Force on Canadian Broadcasting when it stated that:

> Those who are granted the right to use radio frequencies are given an important responsibility. Contributing to the dissemination of Canadian culture is a duty inherent in the privilege they are granted as a public trust on behalf of Canadians.[6]

Ten years later, the report of the Mandate Review Committee arrived at a similar conclusion when it argued that:

> We need Canadian programs and films to enable our citizens to understand one another, to develop a national and community consciousness, to help us shape our solutions to social and political problems, and to inspire the imagination of our children and express their hope.[7]

Remarkably, the Aird Commission made much the same point — albeit more provocatively — in 1929 when it noted that:

> … the majority of the programs heard are from sources outside of Canada. It has been emphasized to us that the continued reception of these has a tendency to mould the minds of young people in the home to ideals and opinions that are not Canadian.[8]

Thus, while not all studies of broadcasting have necessarily used the expression "public trust," it is clear that they have consistently embraced a vision of a broadcasting system that serves the public interests of all Canadians. For this reason, it is both fitting, not to mention somewhat troubling, that the 1929 Report of the Royal Commission on Radio Broadcasting — which is a mere nine pages, with 19 pages of appendices — seems as timely today, more than 70 years after it was written.

That said, the Standing Committee on Canadian Heritage Committee faces a far more complex world than any of our predecessors could possibly have imagined. This makes it inevitable that this Committee's report cannot be as concise as Aird's was in 1929, but in no way precludes it from being as daring and provocative.

The following sections briefly describe the circumstances underlying the legislation that has entrenched broadcasting in Canada as a public trust.[9] As will be seen, this evolution can best be described as a series of stages triggered by government studies and successive Acts of Parliament. A few short biographies of key individuals who contributed to this process are also provided to add a human dimension to what might otherwise be seen as a mere history of published reports.[10]

The Beginnings: 1913-28

Under the *Radiotelegraph Act* of 1913, a government minister was authorized to licence radio broadcasters and to charge a small licence fee for each receiving set. Starting in 1922, radio administration became the sole responsibility of the Radio Branch of the Department of Marine and Fisheries. At this time, most broadcasting, except for the military, was in the private sector and was used by hobbyists, commercial broadcasters and non-profit groups. Popular programming included: music, news, weather, sports, entertainment and live events. A radio network operated by the Canadian National Railways (CNR) provided the only national programming during this time.

By 1928 about 68 radio stations and some 400,000 battery-operated radio receivers were in operation across Canada, including CKUA, Canada's first educational broadcaster. Radio set licence fees were one dollar and regulations restricting content were minimal.

CKUA: Canada's First Educational Broadcaster

In 1925, the University of Alberta's Department of Extension began broadcasting programs on CJCA, the radio station owned by the *Edmonton Journal.* These programs included short lectures by faculty members in classics, history and politics; symphonic music recordings with commentary; and live music. The provincial government provided a $700 grant in 1926 to build a transmitter on the campus and a year later the university established CKUA radio for the purposes of educational broadcasting. Not only was CKUA Canada's first educational broadcaster, it predated the CRBC by nearly six years.

Public Ownership and Government Regulation: 1928-36

As already noted, the federal government launched the Royal Commission on Radio Broadcasting in 1928 to study the state of the Canadian

The First National Radio Network in Canada

When, in 1922, the Canadian government put Sir Henry Thornton to the task of creating the new Canadian National Railways (CNR) out of the remains of several failed railways, it could not have imagined that the results would include the creation Canada's first national broadcasting network.

With the benefit of hindsight, it seems logical that the railroads — the technology that allowed Canada to conquer its distances and come into being — would also pioneer the new electronic link. But Thornton's reasons for developing radio were much more prosaic: he needed good publicity for his rebuilt company, and he saw the new, exciting medium of radio as the way to get it.

Thornton established the CNR radio department in 1923, and it immediately launched a series of publicity "events," broadcasting radio programs to trains specially equipped with radio receivers in their lounge cars. In one of them, British Prime Minister Lloyd George listened to a special program of world news while travelling to Ottawa from Montréal, and

broadcasting system. Chaired by Sir John Aird, the Commission's stated purpose was to "determine how radio broadcasting in Canada could be most effectively carried on in the interest of Canadian listeners and the national interests of Canada."[11] It was also expected to "make recommendations to the Government as to the future administration, management, control and financing thereof."[12]

The 1928 Royal Commission on Radio Broadcasting

The Royal Commission's Report recommended that a public body regulate private broadcasters and air its own programs. As a result of these recommendations, the Canadian Radio Broadcasting Commission, the forerunner of the CBC, came into existence in 1932. The members of the Commission were: Sir John Aird, Charles Bowman and Dr. Augustin Frigon.

Sir John Aird was born in 1855 and died in 1938. In 1928, he was appointed head of the Royal Commission. Charles Bowman, who was editor of the *Ottawa Citizen*, was an early advocate of public broadcasting, having visited the British Broadcasting Corporation (BBC) in 1926, and argued for a system controlled by Ottawa.

Dr. Augustin Frigon began a career that helped to shape Canadian public broadcasting as an electric engineer and later director general of technical education in Quebec. He argued for a strong provincial role in broadcasting. In 1936, he became the assistant general manager of the CBC, responsible for the broadcaster's technical expansion and in 1943, the general manager. In these positions he implemented the plan proposed in the Aird report, introducing new radio broadcasting services such as the FM network, international service and short waves, gaining an international reputation in the broadcasting science community. Dr. Frigon also became involved in the wartime debate over whether the CBC should give airtime to both sides during the plebiscite on conscription. Throughout, he played a major role in the development of Radio-Canada.

Signal interference and overcrowded airwaves due to a relative lack of spectrum management was one reason for the launch of the Aird Commission study. Of paramount concern, however, was the disproportionate number of Canadians who were receiving and listening to American radio signals, a phenomenon which was not only slowing the growth of Canadian radio but was, as noted above, having "a tendency to

was then interviewed by a number of newspaper correspondents, spreading word of the CNR's new radio service around the world.

In 1924 Thornton attacked the "content" problem, obtaining licences for three stations to be built and operated by the CNR, in order to have a regular supply of high-quality content to offer his passengers. Seven other stations presented CN programs from time to time.

By 1 July 1927, the 60th anniversary of Confederation, the electronic "last spike" was driven when the CNR network broadcast the celebrations from Parliament Hill across the entire nation, to the U.S. and overseas to Britain — the first national network broadcast in Canada. Regular network broadcast began the following year. Over time, the network grew to include over 25 stations in 22 cities. CN, of course, had a unique advantage, using its existing long-distance telegraph lines to carry its three hours of weekly programming to the participating stations. But it had extended that advantage by investing in carrier current technology — permitting the carriage of 24 signals over the same wire.

With success, however, came criticism of the government-owned system, much of it from the CPR, which had fallen badly behind. New policy issues were raised when American network programming arrived in Canada, culminating in the report of the Aird Commission on radio. Finally, the onset of the depression and a change of government in Ottawa brought the CNR's period of radio expansion to a close. The stations were sold to the new CRBC (Canadian Radio Broadcasting Commission) which itself became the CBC in 1936.

After a Royal Commission into the railway companies, Thornton was forced to resign — many thought he was treated unfairly by the government. But his record of achievement on all fronts, including the building of a national broadcasting system, was unparalleled. Thornton's parting words to the editor of The *Winnipeg Free Press* ring true, "I shall leave my reputation to the future, feeling as I do that when the blood lust of political vindictiveness has run its course, justice will be done. At any rate, the successor administration will inherit a danged sight better property than was given me...."[13]

mould the minds of young people in the home to ideals and opinions that are not Canadian."[14]

Graham Spry (1900-83) was an life-long advocate of public broadcasting. Together with Alan Plaunt, he co-founded the Canadian Radio League in 1930 and he was instrumental in mobilizing popular and political support for public broadcasting in Canada.

He served as chairman of the Canadian Radio League from 1930 to 1934 and later was chairman of the Canadian Broadcasting League from 1968 to 1973. The Canadian Radio League campaigned for the general recommendation of the 1929 Royal Commission on Broadcasting; that is, the establishment and the support of a national system operated as a public undertaking.

Another issue for many during this era was the uneven availability of Canadian services and programming in different parts of the country. The Aird Commission recognized this problem and observed that: "In a country of the vast geographical dimensions of Canada, broadcasting will undoubtedly become a great force in fostering a national spirit and interpreting national citizenship."[15] For this reason, the report proposed the creation of a publicly owned national broadcaster not unlike the BBC. Only by doing so, it explained, would "the interests of the listening public and the nation ... be adequately served."[16]

In parallel with the Aird Commission's efforts, the Quebec government took an active part in establishing a provincial role in broadcasting. It passed the first radio legislation in 1929, while the Aird Commission was still sitting, and strengthened it in 1931 with legislation concerning licencing and civil responsibility for broadcasting.[17]

The next year, in 1932, following judgments by the Supreme Court of Canada as well as the Judicial Committee of the Privy Council in London, it was confirmed that federal jurisdiction over the airwaves and programming content made it feasible to proceed with a national public radio broadcaster. Thereafter, a special parliamentary committee was created to implement the Aird Commission's recommendations, culminating with all-party support that same year for the passage of the *Canadian Radio Broadcasting Act*, an Act creating the Canadian Radio Broadcasting Commission (CRBC).

In keeping with the Aird Commission's vision of a "national company which will own and operate all radio stations located in ... Canada"[18], the

CRBC was conceived as a three-man commission empowered to regulate, control and carry on broadcasting activities in Canada in the public interest. The CRBC was mandated to originate and transmit programs; lease, buy or build facilities; and, over time, assume complete control over all aspects of Canadian broadcasting. In other words, it was expected to create a monopoly situation similar to that enjoyed by the BBC in the United Kingdom.

The creation of the CRBC coincided, however, with the economic Depression of the 1930s, meaning that Prime Minister Bennett's government could not fund the CRBC as required. As a result, the Commission established stations in just five cities, and relied on private broadcasters to rebroadcast its network programming in other cities and regions. This had the effect of entrenching a public-private system, a mix that characterizes the Canadian broadcasting system to this day.

The CBC as Regulator and Operator: 1936-58

By the early 1930s, more than one million Canadian homes had radio licences and listeners were accustomed to receiving several hours of CRBC network programming each day, not to mention a handful of private stations that offered music, local news, sports and rebroadcasts of popular American entertainment shows. At the same time, Canadians in border regions were continuing to enjoy over-the-air broadcasts from the United States.

Following the election of a new government in 1935, Prime Minister Mackenzie King decided that the *Canadian Radio Broadcasting Act* of 1932 should be revised to more fully capture the essence of the Aird Report and to address concerns that the CRBC was not sufficiently arm's-length in its functioning. Soon thereafter, in 1936, a considerably revised Act was adopted by Parliament, which enshrined the principle that the public broadcaster was a public, not a state broadcaster. It also created a more autonomous body, the Canadian Broadcasting Corporation (CBC), as a replacement for the CRBC.

The new Act gave CBC the mandate to licence and regulate all parts of the national broadcasting system, including those private stations that it did not directly own or operate. Funded by an increased licence fee, it was therefore able to take swift action to enlarge its reach through the construction of a network of regional transmitters. It also increased its programming hours by importing American shows. As a result, within eight years, the CBC was operating two English networks (TransCanada and Dominion) and one French network. At the same time, despite not being allowed to form national networks, private radio stations were flourishing.

Arnold Davidson Dunton was born in 1912 and died in 1987. He was a public servant and educator. In 1945, he was appointed the first full-time chairman of the Canadian Broadcasting Corporation. He was a strong advocate of the need to fund publicly a television system that would be of great national benefit and was a persuasive defender of the corporation's independence.

André Laurendeau: From 1932 when he started a Quebec nationalist youth movement until his death in 1968, André Laurendeau was a journalist and intellectual who lived at the heart of nationalist debate in Quebec. As the secretary of the Ligue pour la Défense du Canada, he debated the role of the CBC's role of promoting government policy during the conscription controversy in 1942. He argued for a bi-cultural Canada in which English and French cultures co-existed before the Massey Commission, and criticized its report for its centralist approach. His career included serving in the Quebec Legislative Assembly. While editor of *Le Devoir*, he frequently published influential articles on broadcasting issues. From 1963-68, he was the co-president of the Royal Commission on Bilingualism and Biculturalism with Davidson Dunton.

As already noted, the Massey-Lévesque Commission identified and affirmed the public trust characteristics of Canadian broadcasting activities in 1951. This report — which was issued just months before the introduction of television to Canadians — did not and perhaps could not have foreseen the speed with which this new technology would make the CBC's dual role as a broadcasting monopoly and broadcast regulator untenable.

Charles Vincent Massey was born in Toronto in 1887 and died in London, England in 1967. He was a politician and diplomat and was Canada's first native-born governor general. He was head of the Royal Commission on National Development in the Arts, Letters and Sciences, and his report in 1951 recommended the formation of a Canada council, which was established in 1957.

Father Georges-Henri Lévesque was a Dominican priest and educator. As an intellectual precursor to the sweeping social change of Quebec's Quiet Revolution, his avant-garde ideas led to difficulties with Quebec Premier Maurice Duplessis. Father Lévesque brought such stature to the Massey Commission in 1949, that it was often called the Massey-Levesque Commission, although he was not a co-chair. He was the founder of the Social Sciences Faculty at Laval University and served as its first Dean until 1955. Later, he founded and became the director of Montmorency House, a centre near Quebec City devoted to cultural, social and religious debate and activism. In 1963, he left for Rwanda to found the Rwanda National University and served as its rector until 1972. He died at the age of 96 in 2000.

Hilda Neatby, a pre-eminent Canadian historian and author, was acting head of the Department of History, University of Saskatchewan when she was recruited to join the Massey Commission from 1949 to 1951. This intensive investigation of learning and culture led her to publish *So Little for the Mind* in 1953, a controversial attack on Canadian education based on four decades as a student and teacher. In addition to her deep concern with education, Ms. Neatby was also known for her outspoken views on subjects ranging from religion to politics. She was a feminist before it was fashionable and an historian who studied the role of Quebec in Canada.

In September 1952, CBC television went on the air in Montréal and Toronto. At first, each Canadian market was limited by CBC broadcast regulators to one television station (typically a private-station licensee) that was expected to carry the CBC's national programming. It soon became clear, however, that the public thirst for more choice and content could not be fulfilled under a policy regime in which the system's sole public broadcasting trustee was also its regulator. This issue was so contentious that a Royal Commission on Broadcasting, to be chaired by Robert M. Fowler, was established in 1955 with a view to recommending new broadcasting legislation.

Robert MacLaren Fowler (1906-80) was a lawyer and executive. He served as chairman of a royal commission and federal committee on broadcasting. In 1955 Fowler was named to head the Royal Commission on Broadcasting. His report, which was tabled in March 1957, was strongly supportive of the Canadian Broadcasting Corporation but called for a new regulatory authority to administer public and private broadcasting. The government of the day did not accept all the recommendations, and in 1965 Fowler again headed a

new federal committee investigating broadcasting. This committee again recommended changes, and this led to the creation of the Canadian Radio Television Commission (CRTC) in 1968.

Regulation by the Board of Broadcast Governors: 1958-68

The Fowler Commission's 1957 report on Canadian Broadcasting recognized the inherent conflict underlying the CBC's dual role as operator and regulator and recommended that its statutory broadcasting functions be separated from its broadcast regulation duties and that a separate and independent body be established to regulate broadcasting in the public interest. Its authors explained:

> We think there have in fact been two public elements involved in radio and television broadcasting. This factual separation of powers should be more precisely defined in law. One of these elements should be an operating agency, engaged in the operation of publicly owned stations and national networks and in the production and distribution of a national programme service throughout Canada. …
>
> The other public agency in the Canadian broadcasting field should be a board created and authorized to act for Parliament, and responsible to Parliament, for the direction and supervision of the Canadian broadcasting system. This board should have responsibility for all elements in Canadian broadcasting. It should not, we suggest, be part of the Canadian Broadcasting Corporation and its members should not … comprise the Corporation.[19]

Convinced by this argument, the government of Prime Minister Diefenbaker moved quickly to introduce and adopt the *Broadcasting Act* of 1958, which created a new policy framework for Canada's broadcasting system.

The *Broadcasting Act* of 1958 created a 15-member Board of Broadcast Governors (BBG) that was responsible for regulating the activities, and relationships between Canada's public and private broadcasters and to ensure the efficient operation of national radio and television broadcasting. The BBG was to consider applications for new stations and make licencing recommendations to the minister responsible. The Act also created a board of governors to oversee CBC operations that would report separately to Parliament.

Joseph-Alphonse Ouimet (1908-88) was an engineer and president of the Canadian Broadcasting Corporation. He worked at a company developing television and built a prototype TV receiver in 1932. In 1934 he joined the Canadian Radio Broadcasting Commission, which later became the CBC. As chief engineer there from 1948, he was responsible for the creation of Canadian TV broadcasting. In 1953 he became general manager of the CBC and president in 1958. Under his leadership the national television service was established from coast to coast and in both languages.

Under the BBG, Canadian television expanded quickly while radio, for the most part, became a local or community service, with the exception of the CBC, which continued to maintain and expand its national network. Meanwhile, a private television network, the Independent Television Organization — soon to be known as CTV — began broadcasting in larger centres in the early 1960s. Around this time, broadcasting (both television and radio) ranked third in profitability among Canada's top 140 industries.

In 1964, the federal government created the Fowler Broadcasting Committee to study the increasing dominance and availability of American programming in Canada. Fowler's Committee was also asked to address and fine-tune some of the ambiguities in the *Broadcasting Act* that were causing disputes between the BBG and the CBC.

The Fowler Committee made its report to Parliament in 1965. The Committee roundly criticized the performance of the BBG, the CBC and private broadcasters and declared that Parliament should state broadcasting policy in firm and clear terms. That said, it was of the view that neither the government nor Parliament should be involved in the details of administration, finance and programming. For this reason, it proposed that a new broadcasting authority — which would be held accountable to Parliament for the achievement of stipulated goals — be formed.

In response, the government issued a White Paper on Broadcasting in 1966 and referred it to the Standing Committee on Broadcasting, Film and Assistance to the Arts. In it, the government declared that Parliament would be asked to enact new broadcasting policy and legislation that would establish the authorities and responsibilities for management of the CBC and the regulation of public and private broadcasting in Canada.

In March 1967, the Standing Committee issued its Report. It declared that:

> A distinctly Canadian broadcasting system is essential to our national identity, unity and vitality in our second century ... The Committee feels strongly that it is not a proper function of Parliament or government to be involved in the programming, or day-to-day operation or supervision of the broadcasting system. It is, however, the responsibility of Parliament to define the public interest to be served by our broadcasting system and to enunciate the national policy. It is also Parliament's duty to create a viable structure within which the service we seek can be assured to the Canadian people.[20]

With this in mind, the Standing Committee made a number of recommendations of lasting significance in the development of policy for the regulation and supervision of the Canadian broadcasting system. These include that: the Canadian Broadcasting Corporation become the prime instrument of public policy in broadcasting; the board of the regulator should not be involved in the day-to-day decision-making or policy-making of the CBC; the regulator should not be empowered to give directions concerning specific programs, other than by generally applicable regulations or in the conditions of licence, to any broadcasters; Canadian talent must be developed; undue concentration of ownership should be investigated by the regulator; and, foreign programming should be welcomed provided Canadians are assured access to Canadian programs of high quality.

Regulation by the CRTC: 1968-91

Based on the policy proposals of the Fowler Report, the White Paper and the Parliamentary Committee, Parliament adopted a new *Broadcasting Act* in 1968. In doing so, it created a new arm's-length regulatory body, the Canadian Radio Television Commission (CRTC),[21] which was empowered to issue broadcast licences and a mandate to ensure that: ownership and control of broadcasting remain in Canadian hands; programming be of high quality with substantial Canadian content; Canadian broadcasting safeguard, enrich and strengthen the nation of Canada from sea to sea. The Act also brought cable television, already well established in some cities, under the authority of the CRTC. The CRTC's first Chair was Pierre Juneau.

Judy LaMarsh, the only woman in Lester B. Pearson's Cabinet from 1963 to 1968, was best known as an outspoken crusader in the war against poverty. In addition to overseeing the introduction of a national pension plan and the design of Canada's medicare system, she helped to modernize the Canadian broadcasting system. As the secretary of state, she signed the White Paper of Broadcasting and piloted the *Broadcasting Act* of 1968. Her legacy includes the appointment of Pierre Juneau as the Chair of the CRTC and the establishment of the Royal Commission on the Status of Women in Canada. In 1968, she wrote *Memoirs of a Bird in a Gilded Cage*, an account of her years in politics and went on to become a radio and television broadcaster. In 1976, she chaired Ontario's Royal Commission on Violence in Communications.

From its inception, the CRTC was far more active than the Board Broadcast Governors (BBG) in its efforts to uphold Canadian content quotas. For the CBC, meeting or exceeding the CRTC's Canadian content quotas was not and has never been a significant challenge.[22] For private broadcasters, however, meeting even the barest minimum — especially between the prime-time hours of 7 and 11 PM — was and remains difficult, particularly with the expansion of the television market due to the licencing of new Canadian services and the importation of foreign broadcasting services.

In 1980, the Minister of Communications, the Honourable Francis Fox, launched a Federal Cultural Policy Review Committee, to be chaired by Louis Applebaum and cochaired by Jacques Hébert.

Louis Applebaum was born in 1918 and died in 2000. He was a composer, conductor and administrator. He wrote and conducted hundreds of scores for film, theatre, and for radio and TV drama and was a consultant for various arts organizations. In addition, he served on numerous committees and was co-chairman, with Jacques Hébert, of the Cultural Policy Review Committee from 1980-82.

Born in 1923, Jacques Hébert worked as a writer, publisher and senator. He ran a newspaper, was the host of a public affairs program on television, and operated two publishing houses. In 1980-82 Hébert served as co-chairman, together with Louis Applebaum, of the Cultural Policy Review Committee. He retired from the Senate in 1998.

Pierre Juneau: a career dedicated to the production and distribution of Canadian cultural creations

Since the 1930s, one of the primary objectives of the federal broadcasting policy has been to ensure that Canadians have access to a variety of programs produced in Canada by Canadians — programs that reflect the cultural, social and economic aspects of the Canadian society. Pierre Juneau's career was closely tied to the federal government's broadcasting objectives. Throughout a twenty-year period, he held virtually every important position in the Canadian broadcasting hierarchy.

His association with the National Film Board (NFB) began in 1949 and allowed him to grasp, for the first time, the magnitude of the challenges involved in the production of films in Canada, as well as the limited resources available in Canada at that time to ensure the distribution of cinematographic productions. These early years were formative ones, and his numerous responsibilities at the NFB, an organization dedicated to the promotion of Canadian filmmakers and the production and distribution of their work, prepared Pierre Juneau for his role as chairman of the CRTC, a position he assumed in 1968.

Based on what he had done for the NFB, it was to be expected that the CRTC under the chairmanship of Pierre Juneau would energetically approach the issues of copyright and Canadian content that were of great concern to both the public and the federal government in the late 1960s. Order-in-Council decision 1968-1809 required that all broadcasting undertakings licenced by the CRTC be at least 80% Canadian-owned. Mr. Juneau told broadcasters that Canadian television must reflect Canadian life and that the CRTC would set maximums for foreign content. The 1971 CRTC decision to impose a minimum Canadian content threshold on broadcasters met with great consternation. Nonetheless, this decision, which was particularly controversial, especially among private broadcasters, proved to be extremely beneficial for Canadian writer-composers and performers in the field of popular music.

Following his appointment as president of the Canadian Broadcasting Corporation (CBC) in 1982, Pierre Juneau faced a double challenge: staying on course with the Corporation's major objectives for the varied production of Canadian content accessible in all parts of the country and in both official languages, and coping with the severe budget cuts imposed on the CBC by the government of the day. Caught between a rock and a hard place, the CBC had to adopt painful but necessary measures, and criticism of the Corporation increased, even going so far as to suggest the dismantling of the public broadcaster.

For the man whose career was devoted to promoting the production and distribution of Canadian projects, this was a particularly turbulent and demanding period. The times were hard, but Pierre Juneau did not give up the fight to ensure that the CBC came out unscathed. Despite the existing constraints, a new CBC Broadcast Centre was built in Toronto, centralizing previously scattered operations under one roof, and the Newsworld channel was launched. Under the direction of Pierre Juneau, the Canadian Broadcasting Corporation was able to defend its mandate and maintain its drive and energy. The Corporation's commitment to Canadian artists and artisans was once again confirmed.

In 1996, seven years after giving up the chairmanship of the Canadian Broadcasting Corporation, Pierre Juneau was named Communicator of the Year by the Ryerson School of Radio and Television Arts in Toronto. Mr. Juneau was recognized "for his significant contribution to human values in Canadian broadcasting."[31]

The Applebaum-Hébert Report, which was issued in 1982, studied all areas of relevance to Canadian cultural policy, including broadcasting. In this regard, it made a number of recommendations concerning the Canadian broadcasting system, including that:

- the CBC discontinue all commercial advertising, phase out in-house and local programming, and rededicate itself to regional programming;
- the CRTC require private broadcasters to allocate substantial percentages of their programming time and expenditures on new Canadian programming;
- the CRTC licence new private local stations in markets able to absorb them;
- a new *Broadcasting Act* be enacted by Parliament;
- a new Act give clear authority to the CRTC in matters related to the CBC; and,
- a new Act confirm the total independence of the CRTC from political intrusion, but permit direction by the Minister on the matters of general policy.

In 1984, to address the ongoing challenges the Canadian broadcasting system was facing due to audience fragmentation, changes in technology and ongoing concerns over Canada's cultural sovereignty, the Task Force on Canadian Broadcasting, co-chaired by Florian Sauvageau and Gerald Caplan was created to advise the federal government on changes that should be made to Canada's broadcasting policy.

Florian Sauvageau (born in 1941) is a lawyer, journalist and professor in the Department of Information and Communication at Laval University. In 1985-86, he was co-chair, together with Gerald Caplan, of the Federal Task Force on Broadcasting Policy.

Gerald Lewis Caplan was born in 1938 and worked as a political administrator and historian. In 1985, he was named as co-chair of the Task Force on Broadcasting Policy, which reported the following year with a strongly nationalist series of recommendations.

Echoing Massey's 1951 vision of broadcasting as a public trust, the Task Force delivered a unanimous report in 1986, which as noted earlier stated that: "[c]ontributing to the dissemination of Canadian culture is a duty inherent in the privilege [broadcasters] are granted as a public trust on behalf of Canadians."[24] The Task Force therefore recommended that:

- all broadcasting undertakings be part of a composite system;
- all licensees be regarded as trustees of the Canadian public;
- the CBC play a central role in assuring that Canadians have a truly national broadcasting system, in radio and television, in English and French;
- CBC funding be stable and secure for the duration of its licence period;
- all American programming on CBC television be phased out as soon as possible;
- a new national, public broadcaster, TVCanada, be created.[25]

As for private stations, the Task Force recommended that the CRTC set stricter conditions of licence to ensure that private stations and networks invest more in the creation and production of Canadian programs. The Report also called for some government support and protection for the private sector, in return for which the private sector (in their role as trustees) would contribute to fulfilling the objectives of the Act.

Flora McDonald served as a federal Member of Parliament from 1972 to 1988 and held three cabinet positions: Minister of External Affairs, Minister of Employment & Immigration and Minister of Communications. She replaced Marcel Masse as Minister of Communications in June 1986, just days after the Task Force of Broadcasting Policy submitted its report. Under her direction the *Broadcasting Act* of 1988 was developed and shepherded through the House of Commons, only to die on the order paper of the Senate when Parliament was dissolved for the general elections. The legislation was re-introduced in substantially the same form, by Marcel Masse and eventually adopted in 1991. In recent years, Ms. MacDonald has served on the boards of human rights groups and worked for world peace. She was awarded the Pearson Peace Medal in 1999.

Marcel Masse was born at St-Jean-de-Matha, Quebec on 27 May 1936. He was a student of history and political science at the *Université de Montréal* and abroad in London and Paris, and taught high school in Joliette, 1962-66. He was a member of the Quebec National Assembly between 1966-73 and held several ministerial posts. In 1974, he joined Lavalin, a Montréal engineering firm. He was elected to the House of Commons in 1984. As Minister of Communications from 1984 to 1986, he defended the cultural industries during the free trade negotiations with the United States. In 1985, he established the Caplan-Sauvageau Task Force. In 1988, he was reappointed as Minster of Communications and introduced the legislation that led to the passage of the *Broadcasting Act* of 1991.

The House of Commons Standing Committee on Communications and Culture examined the Report of the Task Force between 1986 and 1988. Its all-party unanimous report, with more than 140 recommendations, contributed to a revamped Broadcasting Act adopted by the House of Commons in 1991.

Regulation by the CRTC since 1991

As noted above, an Act of Parliament established the CRTC in 1968. Since 1985, the Commission has operated as an independent public authority constituted under the *Canadian Radio-television and Telecommunications Commission Act* and, since 1993, has reported to Parliament through the Minister of Canadian Heritage. Under the Act, the Cabinet may appoint up to 13 full-time and 6 part-time commissioners for renewable terms of up to 5 years. The Commission is also subject to orders from Cabinet and must take into account the needs and concerns of Canadian citizens, industries and various interest groups.

The CRTC's mandate is to ensure that the terms of the *Broadcasting Act* — particularly Canada's broadcasting policy (Section 3) — are fulfilled. The Commission does this by seeking to maintain a balance — in the public interest — between the social, cultural and economic goals of the Act. As the Commission's website explains:

> Our mandate is to ensure that programming in the Canadian broadcasting system reflects Canadian creativity and talent, our linguistic duality, our multicultural diversity, the special place of Aboriginal people within our society and our social values. At the same time, we must ensure that Canadians have access to reasonably

> priced, high-quality, varied and innovative communications services that are competitive nationally as well as internationally.[26]

With all these interests in mind, the Commission today acts as the regulator for more than 5,900 broadcasters, including: over-the-air television; cable distribution; AM, FM and DAB radio; pay, specialty and digital television; direct-to-home satellite systems (DTH); multipoint distribution systems (MDS); and, subscription television and pay audio.[27] In doing so, it holds regular public hearings, round-table discussions and informal forums to process applications and make decisions regarding broadcasting licences and related requests.[28]

A. The *Broadcasting Act* and its Public Policy Principles

The *Broadcasting Act* of 1991, which remains in force today, represents the culmination of more than 60 years of public consultation and negotiation with the system's stakeholders. This section summarizes two of the Act's most important elements: Section 3: Canada's broadcasting policy, and Part II: the "Objects and Powers of the [CRTC] in Relation to Broadcasting."[29]

Canada's Broadcasting Policy

For the purposes of this Committee's review of the Canadian broadcasting system, the most important public policy principles are found in Section 3(1) of the Act, where "the broadcasting policy for Canada" is spelled out in detail.

Section 3(1) begins by repeating the principle that the Canadian system should be "effectively owned and controlled by Canadians." It also reaffirms the long-standing perspective that the airwaves are a public trust to be used by its trustees in the public interest when it declares that:

> (*b*) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

Section 3(1) then explains that:

> (*d*) the Canadian broadcasting system should
>
> (i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,
>
> (ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity …
>
> (iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within that society, and
>
> (iv) be readily adaptable to scientific and technological change.

Thereafter, it identifies the responsibilities of each element of the Canadian broadcasting system and how each one should: "contribute in an appropriate manner to the creation and presentation of Canadian programming." It also stresses that broadcasters have a responsibility to use Canadian talent and resources; the belief that programming should be of high quality; and that programming should represent the diverse nature of Canada's population.

Further on, expectations with regard to the Canadian Broadcasting Corporation's programming are described. Section (3)(*m*) states:

> (*m*) the programming provided by the Corporation should
>
> (i) be predominantly and distinctively Canadian,
>
> (ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
>
> (iii) actively contribute to the flow and exchange of cultural expression,

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

(vi) contribute to shared national consciousness and identity,

(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and

(viii) reflect the multicultural and multiracial nature of Canada.

Subsequent clauses note: the importance of Aboriginal broadcasting; the need to serve disabled persons; and the value of alternative television programming services that are complementary and cater to specific tastes and audiences.

Finally, with respect to private networks and programming undertakings, the Act makes it very clear in Section 3(1)(s) that these particular trustees are expected to "contribute significantly to the creation and presentation of Canadian programming" and that they should "be responsive to the evolving demands of the public.

The Objects and Powers of the CRTC in Relation to Broadcasting

The objects and powers of the CRTC extend between Sections 5 through 34. While it is unnecessary in this context to describe each of these sections in detail, those that relate most directly to the Commission's implementation of Canada's broadcasting policy include: Section 5, regulatory policy; Section 9(1), licencing authority; Section 10(1), general broadcasting regulations; and Section 21, rule-making authority.

Section 5 details the regulatory policy through which the Commission may fulfil its mandate to supervise and regulate the Canadian broadcasting system. In this regard, Section 5(2) states that:

(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

> (*a*) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;
>
> (*b*) takes into account regional needs and concerns;
>
> (*c*) is readily adaptable to scientific and technological change;
>
> (*d*) facilitates the provision of broadcasting to Canadians;
>
> (*e*) facilitates the provision of Canadian programs to Canadians;
>
> (*f*) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and
>
> (*g*) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

Section 9(1) grants the Commission the authority to:

> ... in furtherance of its objects,
>
> (a) establish classes of licences;
>
> (*b*) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee ...
>
> (*c*) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion;
>
> (*d*) issue renewals of licences for such terms not exceeding seven years and subject to such conditions as comply with paragraph (b);
>
> (*e*) suspend or revoke any licence;
>
> (*f*) require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of

programming directly to the public using the facilities of that common carrier;

(*g*) require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and

(*h*) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.

Section 10(1) provides the Commission with general regulation-making authority, including:

(*a*) respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs;

(b) prescribing what constitutes a Canadian program for the purposes of this Act;

(c) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to the broadcasting policy set out in subsection 3(1);

...

(g) respecting the carriage of any foreign or other programming services by distribution undertakings;

Finally, Section 21 identifies the scope of rules the Commission may make with respect to:

(a) ... the procedure for making applications for licences, or for the amendment, renewal, suspension or revocation thereof, and for making representations and complaints to the Commission; and

(b) ... the conduct of hearings and generally respecting the conduct of the business of the Commission in relation to those hearings.

B. Assessing Canada's Broadcasting System

The above extracts from the current *Broadcasting Act* not only set the tone for the functioning of Canada's broadcasting system but also impose remarkably high expectations and responsibilities on the trustees of Canadian broadcasting. Indeed, so great is the pressure placed on the Canadian broadcasting system that it prompted the Davey Committee in 1970 to declare that:

> … broadcasting is so much a beast of burden that we have saddled it with responsibility for holding the country and our Canadian culture intact. No other communications medium has this charge laid upon it by Act of Parliament: "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." We rely for this on the same medium that is the principal advertising mainstay for the soap industry.[30]

In light of these responsibilities, which were repeated in the 1991 version of the Act, this report makes proposals as to how these principles and objectives can still apply. Before doing so, the next chapter looks at the evolution of broadcasting technologies.

Endnotes

[1] Report of the Royal Commission on Radio Broadcasting (Aird Commission) (Ottawa: F.A. Acland, 1929), p. 10.

[2] Ibid, p. 6.

[3] *Making our Voices Heard: Canadian Broadcasting and Film for the 21st Century*, Report of the Mandate Review Committee, Department of Canadian Heritage, 1996, p. 21.

[4] Report of the Royal Commission on National Development in the Arts, Letters and Sciences, 1949-1951 (Massey Commission) (Ottawa: King's Printer, 1951), p. 279, 283.

[5] *The Uncertain Mirror*. Report of the Special Senate Committee on Mass Media (Davey Committee) (Ottawa: Queen's Printer, 1970), p. 195.

[6] Report of the Task Force on Broadcasting Policy (Caplan-Sauvageau) (Ottawa: Minister of Supply and Services Canada, 1986), p. 147.

[7] Mandate Review Committee, p. 23-24.

[8] Aird Commission, p. 6.

[9] Related to the notion of the "public trust" is "citizenship", that is, the rights of citizens to have the information that they need to know to make decisions about their lives and communities, the rights of taxpayers to have money spent on their behalf in a responsible manner, the rights of access, and, the importance of democratic rights.

[10] Much of the biographical information in this chapter is adapted from *The Canadian Encyclopedia*, www.thecanadianencyclopedia.com.

[11] www.rcc.ryerson.ca.

[12] Aird Commission, p. 5.

[13] Ibid.

[14] Ibid, p. 6.

[15] Ibid.

[16] Ibid.

[17] In 1945, Maurice Duplessis's government passed an Act to create a provincial broadcasting service, claiming Quebec had constitutional authority. The Act also created Radio-Québec.

[18] Aird Commission, p. 7.

[19] Report of the Committee on Broadcasting (Fowler Committee) (Ottawa: Queen's Printer, 1965), p. 90-91.

[20] Frank Foster, *Broadcasting Policy Development* (Ottawa: Franfost Communications, 1974), p. 229.

[21] In 1976, the CRTC was renamed the Canadian Radio-television and Telecommunications Commission to reflect the expansion of its jurisdiction to include common carriers.

[22] www.ryerson.ca

[23] See Chapter 5 for an overview of what constitutes Canadian content under existing definitions.

[24] Caplan-Sauvageau, p. 147.

[25] The TVCanada proposal is also discussed in Chapter 7.

[26] www.crtc.gc.ca

[27] The CRTC also regulates over 61 telecommunications carriers, including major Canadian telephone companies.

[28] In 1999, for example, the Commission processed 1,754 broadcasting and 1,533 telecommunications applications. It also issued 1,230 orders and granted 90 licences to telephone companies that provide international long distance services. It also responded to 8,900 electronically transmitted documents, as well as over 53,900 telephone calls and 16,000 letters and emails of requests and complaints.

[29] See Appendix 3 for the full text of the 1991 *Broadcasting Act*.

[30] Davey Committee, p. 194.

BACKGROUND

Chapter 3

The Evolution of Broadcasting Technologies

A. Key Broadcasting Concepts

Almost all developments in broadcasting — and the way we think about broadcasting — rely on a handful of simple scientific concepts. This chapter reviews these concepts and explains why they have been important for the development of the Canadian broadcasting system.

Waves

Electromagnetic waves permit communication across great distances. In the case of Alexander Graham Bell and Samuel Morse, electromagnetic waves were sent along a copper wire.[1] In the case of Fessenden, electromagnetic waves were transmitted without wires. Since no wires were involved, people often assume that such transmissions are "over-the-air" or use "airwaves." But these terms are not entirely accurate: sound relies on air as a medium; electromagnetic waves, however, can travel through the vacuum of space.[2]

Much is now known about electromagnetic waves. It is known that light, television, radio, x-rays and ultraviolet radiation (the same kind that causes sunburn) are all electromagnetic waves and that these waves, which travel at the speed of light, can be put to various innovative uses if properly managed.

Humans are sensitive to those wavelengths that pass through the earth's atmosphere without being absorbed. The particles that make up visible light are called photons. The human eye will detect a source of light that is composed of as few as seven photons.[3]

The only difference among the various types of waves that humans use (e.g., for radio, to see, and to create x-rays) is their wavelength. Anyone who has watched a body of water or been on a boat soon realizes that all waves are not the same. Some waves are short and steep while others are long gentle swells that are hardly noticeable. All waves can be described in terms of how fast they are travelling (speed), how long they are (wavelength) and their frequency (i.e., how many times a minute the boat rises, falls and rises to the same point again).[4]

Electromagnetic waves (e.g., light and radio waves) travel at the speed of light; their frequency is described in cycles per second (cps).[5] Since light travels approximately 300,000 kilometres a second, it takes about ten minutes for light to reach the earth from the sun. If you divide a wave's frequency by the speed of light you obtain its wavelength.

The Spectrum

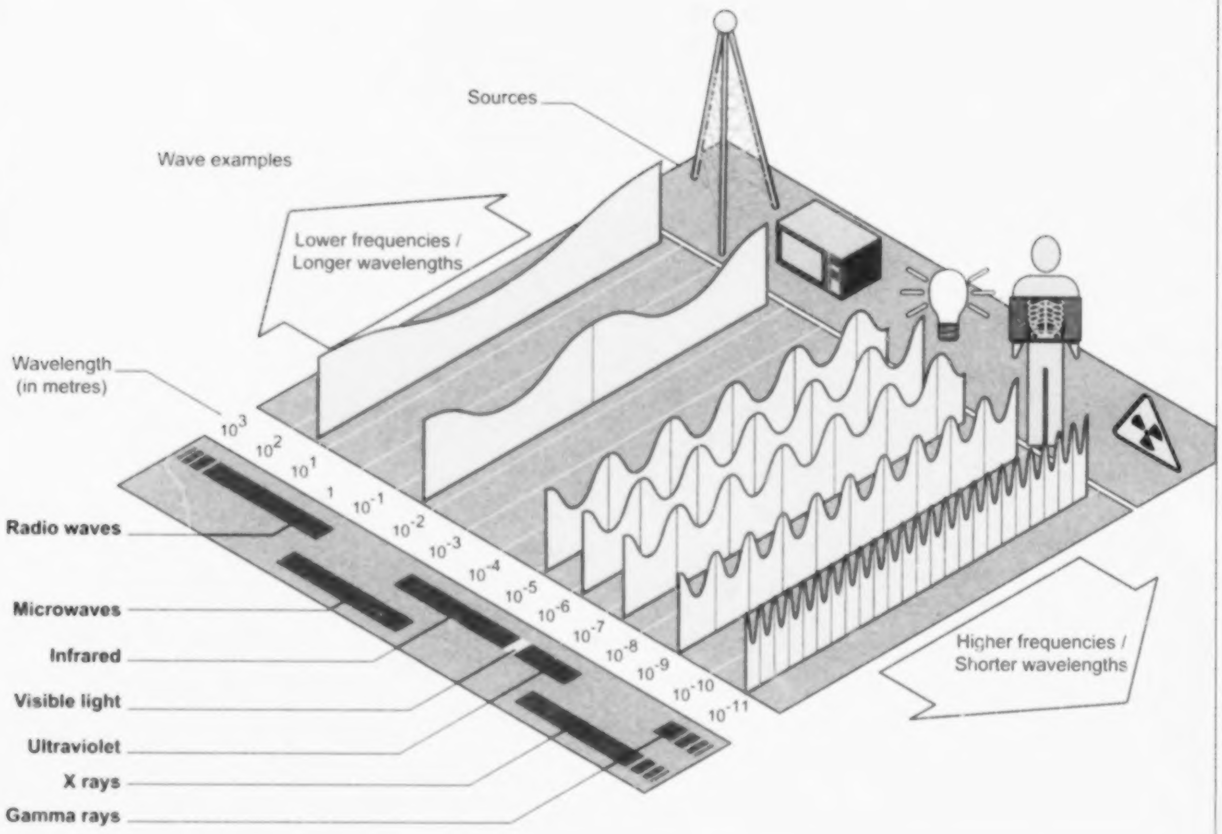
Because electromagnetic waves can be described in terms of their wavelength (i.e., their frequency), they can be arranged from shortest to longest in an order called a spectrum. Anything that can be ordered in this way can be thought of as a spectrum. For example, a rainbow seen after a storm is a spectrum of visible light. If a teacher placed children in a line according to height, from shortest to tallest, this too could be described as a spectrum. In simple terms, a spectrum can be a range of heights, colours or wavelengths.

This is why scientists and engineers talk about the electromagnetic spectrum. To describe the part of the electromagnetic spectrum that people use for sight, they talk about the "visible spectrum." For similar reasons, the electromagnetic waves used for communications (e.g., television, radio, cellular telephones) are called the "radio frequency spectrum" (RFS).

The sections of the electromagnetic spectrum that are most frequently discussed in the scientific or engineering literature are (moving from the shortest waves to the longest): gamma rays; x-rays; ultraviolet; visible; infrared; microwaves; VHF (television); radio (FM — frequency modulation); shortwave; radio (AM — amplitude modulation); other radio waves.

Gamma rays are extremely short (approximately a billionth of a centimetre in length). Microwaves are about one centimetre in length. VHF (television) waves are about a meter in length (100 centimetres). Some radio waves are longer than a kilometre (e.g., those used by an AM radio station). Very, very low frequency waves (VVLF) are used to

Figure 3.1 Electromagnetic spectrum


Sources
Wave examples
Lower frequencies /
Longer wavelengths
Wavelength
(in metres)
10^{3}
10^{2}
10^{1}
1
10^{-1}
10^{-2}
10^{-3}
10^{-4}
10^{-5}
10^{-6}
10^{-7}
10^{-8}
10^{-9}
10^{-10}
10^{-11}
Radio waves
Microwaves
Infrared
Visible light
Ultraviolet
X rays
Gamma rays
Higher frequencies /
Shorter wavelengths

communicate with submarines and these waves can be several kilometres in length. Typically, higher frequencies are limited to line-of-sight and are useful for local radio stations. The same frequency can be used by another more distant radio station. This allows a radio station in Montréal to use the same frequency as a radio station in Toronto without either station interfering with the other.

Reginald Aubrey Fessenden: Canada's Radio Pioneer

> This afternoon here at Cobb Island, intelligible speech by electromagnetic waves has for the first time in World's History been transmitted.
>
> *Reginald Fessenden, in his diary, December 1900.*

On 23 December 1900, for the very first time in history, a voice was transmitted by radio waves. It said, "Is it snowing where you are, Mr. Thiessen? If so, telegraph back and let me know."

From our perspective, over a hundred years later, there are two striking things about this incident. The first is that the world's first voice radio transmission was also the first example of interactive broadcasting. And the second is that the voice belonged to a Canadian, Reginald Fessenden.

And yet, in a way it is not surprising. Canadians have always been fascinated with broadcasting. From Confederation on, we have understood that we could not build a nation without the creative use of technology to conquer distance. The railway, the telegraph, the telephone, radio, television, satellite, cable — each new development has rapidly been put to the service of allowing Canadians to connect with each other.

So it is not surprising that Fessenden also saw the human potential of his invention. On Christmas Eve, 1906, he presented the world's first radio program, for the benefit of wireless operators on ships. Fessenden played *O Holy Night* on his violin, and his wife and her friend sang carols.

Sadly, Fessenden was never recognized while alive for his pioneering work. While both his ideas and his achievements were ahead of the better-known Marconi, he had difficulty obtaining financial backing — even from the Canadian government — and lost control of his key patents. In the end, he created more than 500 inventions but, in the words of his wife, his fertile mind "failed to defend itself against commercial assault." In his obituary, in 1932, the *New York Herald Tribune* commented, "It sometimes happens, even in science, that one man can be right against the world. Professor Fessenden was that man."

Over-the-Air Broadcasting

Enough about electromagnetic waves was known by the early decades of the twentieth century that over-the-air communication across short or longer distances using radio sets soon become commonplace. Some of the first uses of radio were by British and American navies for point-to-point communication between ships at sea. In addition by the early 1920s, countless thousands of radio amateurs across Europe and North America were operating as one- and two-way broadcasters, offering content of interest to themselves, playing music or waiting to be contacted by other enthusiasts so that they could measure the distances across which they could be heard.

The leap from transmitting sound to images did not take long. It was known even in the late nineteenth century that the transmission of images by converting light to energy and back to light was possible. It was not until Karl Ferdinand Braun's invention of the cathode ray tube in 1897, however, that the development of the first functional and practical television systems began in earnest.

The First World War slowed advances in television technology, but concurrent developments in communications via wire and radio, coupled with the rapid rise and popular appeal of radio broadcasting in Europe and North America, prompted a renewed interest in television in the early 1920s. In Europe, the first crude television broadcasts were demonstrated in the mid- to late 1920s, culminating with a regular, albeit limited, schedule of television programming in Germany and Great Britain between the mid-1930s and the outbreak of the Second World War in 1939. In the United States, experiments with television technology continued throughout the 1930s, with the first stations going on the air in July 1941. These stations, however, were shut down in December 1941 upon the United States' entry into the war.

While the commercial development of television was delayed because of the Second World War, television technology was extensively refined and exploited as a tool for guided missiles, long-range surveillance and reconnaissance. Consequently at war's end in 1945, superior broadcast standards had been developed, notably enhancing television's practicality for mass communication. Furthermore, the shortcomings of existing tube technologies for war-time communications had accelerated the invention of solid-state electronics, such as the transistor.

After the Second World War over-the-air television re-emerged across Europe and the United States, and was officially introduced to Canadians in 1952.[9]

Cable

By the mid-1950s, Canadians living near the border with the United States had access to four over-the-air television networks, one Canadian (the CBC and Radio-Canada) and at least three American. Without cable, however, most Canadians living further from the border had access to just one or two television stations even into the mid-1970s. This is why Canadians so quickly adopted cable from its introduction in 1952.

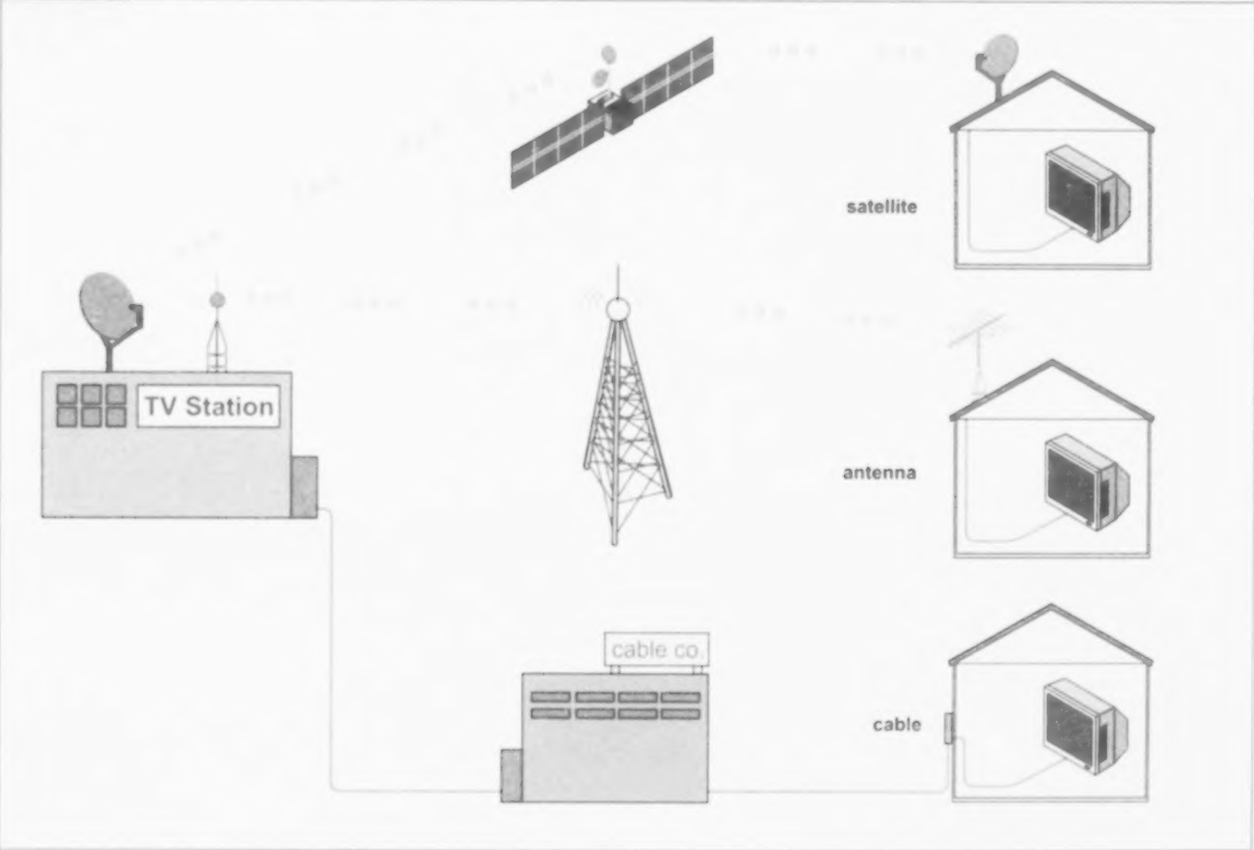
Reginald Aubrey Fessenden died in his house by the sea in Bermuda on 22 July 1932. On a memorial above his vault were inscribed these words:

His mind illumined the past
And the future
And wrought greatly
For the Present

Beneath, in Egyptian hieroglyphics is written:

I am yesterday and I know tomorrow.

Figure 3.2 Transmission of television



At its most basic level, cable relies on the same principles that Samuel Morse used to develop the telegraph. A television signal is translated into a set of electromagnetic waves, sent along a wire and converted into a television signal by a set top box (usually called a decoder).[10] Because the cable could carry more frequencies (i.e., channels) subscribers were able to receive approximately 30 channels in the 1970s. With the development of more efficient technology (multiplexing), its capacity now exceeds 100 channels.[11,12]

Satellite

Canada was an early pioneer in the use of satellite technology to relay television signals. The Anik-1 satellite launched in 1972 was capable of relaying 12 television programs at once. This allowed the first marriage of cable and satellite. The broadcast signal could be sent from the cable system (e.g., in Toronto) to the satellite and from there relayed back to a cable system in another city (e.g., Winnipeg). Before this, television signals were sent by microwave (developed during the 1950s). Before that, airplanes sometimes flew filmed copies (i.e., a kinescope) of programs, since no mechanism existed to send them across the country. For example, in 1953, the CBC arranged to have a kinescope of the Queen's coronation flown to Canada for broadcast, which it later supplied to the American network, ABC.

John Chapman — A Canadian Visionary

On 9 November 1972, when Anik A-1 was launched into orbit, Canada became the first country in the world with a domestic satellite communications system.

This milestone was the achievement of a team of scientists, working within programs first established by such pioneers as Frank Davies of the Defence Research Telecommunications Establishment, Donald Rose at the National Research Council, and Balfour Curry of the University of Saskatchewan.

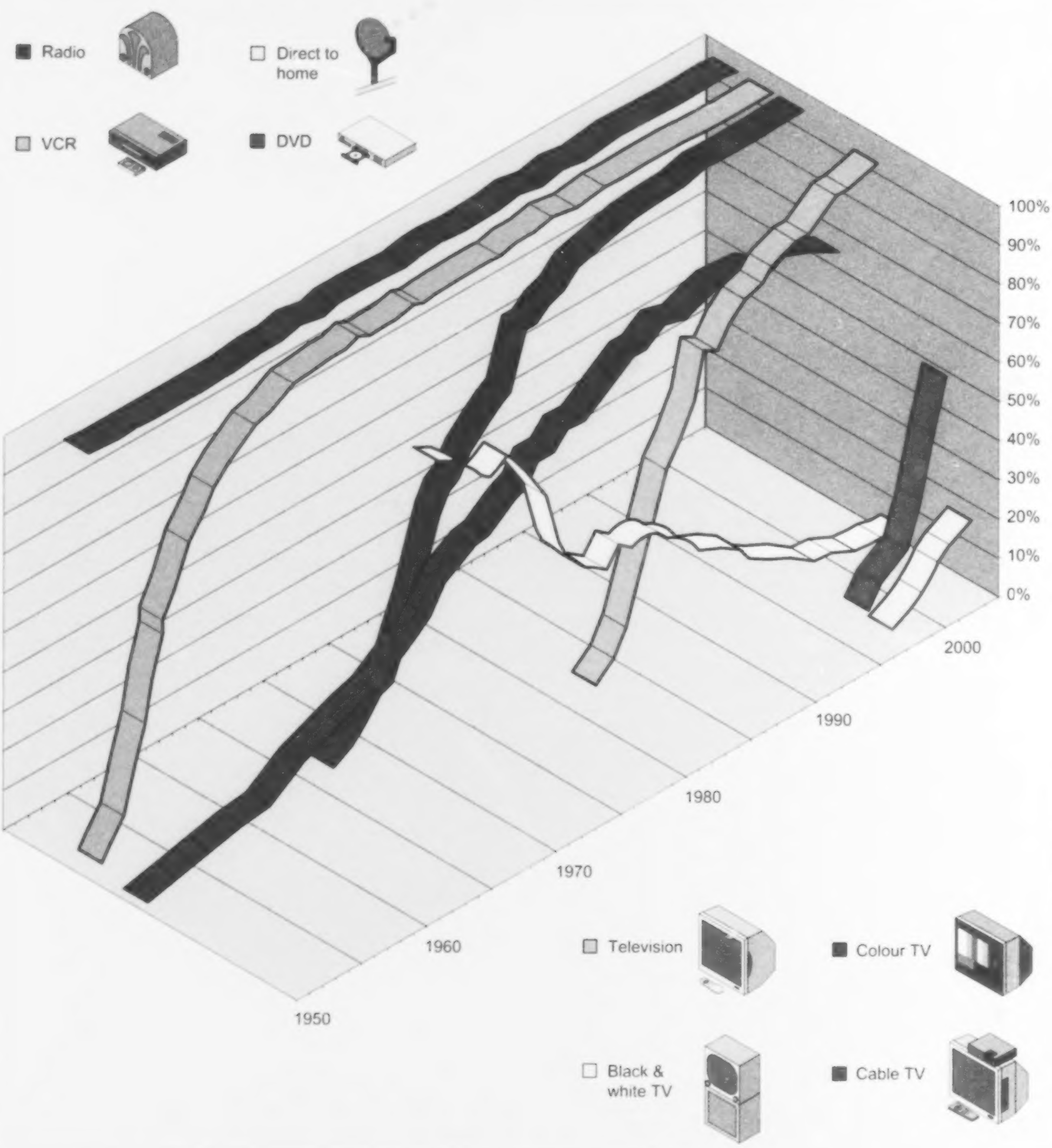
But the visionary who, more than any other is given the credit for Canada's space communications efforts is John Chapman. Chapman led the team that designed and built Canada's first satellites, the Alouette/ISIS program. First launched in 1962, this series of satellites was among the most complex and successful space programs of its day.

Canada was also the first country to carry out a large-scale demonstration of satellite technology to send television direct to individual homes (1982). This technique is referred to as direct-to-home (DTH) or direct broadcast satellite (DBS). This early capability was not exploited until the late 1990s, however, due to uncertainty as to what satellite television distribution would mean for the economic health of the cable industry.[13]

The great advantage of using satellite as a delivery system to homes is the near complete coverage of the country.[14] For this reason — with just a few exceptions — almost every household in the country is now able to receive a similar level of service. This was not true between 1950 and 1995 and was a major source of complaint by individuals during that 45-year period, particularly in the North.[15,16]

Science fiction writers Jules Verne and H.G. Wells described the potential popularization of television in the late nineteenth century. It did not become a popular source of entertainment, however, until shortly after the

Figure 3.3 Percentage of households with different types of communications equipment



With an international reputation, Chapman was invited by the government to lead a study to recommend future efforts. The "Chapman report" of 1967 effectively laid the foundation that ensured that Canada could control its own space resources for its own communications needs. New agencies were recommended: the Department of Communications was formed soon thereafter, and the public/private partnership emphasized by Chapman was seen in the creation of Spar Aerospace in 1968 and Telesat Canada in 1969.

The new infrastructure began the development of the Anik satellites, culminating in the historic launch in 1972. But even before the launch, an exciting new direction was initiated when, in 1970, a conference on satellite communications, chaired by Chapman, was held in Yellowknife. Clearly satellites were to be an important part of delivering services to the North, but what the conference revealed was that Northerners and Aboriginal groups wanted the new satellites to be an instrument for communicating with each other.

The Communications Research Centre began cooperation with NASA in the development of a new concept: a high-powered satellite to operate in higher frequencies, permitting the use of small dish receivers that could be used in individual homes. *Hermes* was launched in 1976. It was used for trials of direct-to-home broadcasting and all kinds of two-way communications with Aboriginal and other remote communities in the areas of health, education, and tele-conferencing. CBC demonstrated its DTH abilities to other broadcasters at the Montréal Olympics, and at the end of its life, *Hermes* was moved over Australia to develop space applications there.

Hermes was not only the precursor of the DBS satellites used by millions of North Americans today, but the foundation of the highly successful northern services of CBC and APTN, which have brought remote areas into contact with each other and with the south of Canada.

In 2003, Canada's space infrastructure is taken for granted: it is hard to imagine how restricted our services would be without these pioneering efforts. Chapman himself died in 1979, and was posthumously given the McNaughton Award, with the citation: "For his vision and leadership in recognizing the potential of satellites in Canada's future utilization of space."[17]

Second World War. Figure 3.3 shows the penetration of selected communication technologies since the earliest days of broadcasting.[18,19]

B. The Digital Revolution

All waves can be described in terms of their length, the speed at which they move and how frequently they pass. Those who perfected the technology to send a signal that could be turned into sound or a picture used this knowledge. Thus, the waves that they transmitted were a model — or analog — of the actual sound or picture. This is why they were referred to as analog signals. Similarly, a vinyl record has a wavy groove that is a model (or analog) of a given sound, such as a song.

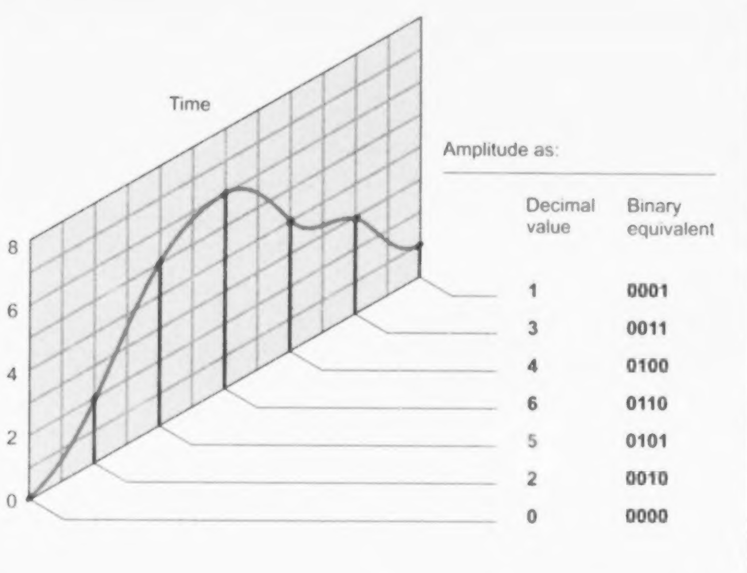
For centuries, people have known that one can represent a wave by a series of numbers organized in a certain way (i.e., graphically). The French mathematician and physicist Jean-Baptiste Joseph Fourier, for example, showed that waves could be represented as a sum of simple sine waves.[20]

People have also known since the time of Leibniz (1646-1716) that it is possible to create a number system based on zeros and ones. This knowledge did not have much practical application until the development of modern electronics when it was realized that zeros and ones could be represented by the presence or absence of an electrical charge. Figure 3.4 shows how numbers from 0 to 10 can be represented in a binary system (i.e., as 0s and 1s).[21]

As can be seen, it is a simple matter to represent the numbers we are most familiar with (1, 2, 3, etc.) as zeros and ones. Since a wave can be represented by a set of numbers, it became possible to describe the wave in digits using only zeros and ones (i.e., it became possible to describe the physical wave digitally).[22] Until the 1970s, all radio and television signals were transmitted as electromagnetic waves that "represented" the sound or the picture (i.e., as analog signals). It was only upon the arrival of the digital revolution that people began to talk about the difference between analog and digital signals.

There are a number of advantages to transmitting signals digitally. The most obvious one to a non-scientist has to do with a cleaner signal. A digital telephone conversation, for example, will have less buzz and hum then a typical analog signal. It is also possible to increase the capacity of

Figure 3.4 Analogue to digital conversion: Sampling a simple wave



a network using digital signals (i.e., digital signals use less space). This allows cable companies to deliver a greater number of digital channels than analog channels using the same physical cable.[23]

In broadcasting, digital technology has already had notable impacts. For example, the cable industry's long-standing monopoly has recently ended and more profound changes with digital broadcasting and the Internet will likely cause further disruptions. Indeed, some of the most profound changes — which are only partly discernible in 2003 — will have to do with Internet transmission (or "streaming").

The Internet

The Internet has caused much confusion, uncertainty and even fear in some circles.[24] The Internet is based on a set of standards and rules (a protocol) for sending messages between two points (e.g., sending an e-mail to a friend). This section reviews a few of the key characteristics of Internet communication that are important if one is to assess likely impacts on broadcasting and the availability of Canadian content.[25]

All communication depends on rules (i.e., a grammar) that tell you when communication starts, when it stops, where it is being sent and to whom. In electronic communications (e.g., telegraph messages, cellular phones) these rules are referred to as standards or protocols.

The Internet uses the existing telecommunications infrastructure to transmit information. The one addition is a computer (server) to store messages for individuals. The organization that provides the servers is called an Internet Service Provider (ISP) or host.

Electronic mail (e-mail) because of its ease, speed, extremely low price and reliability has often been described as the application that did the most to encourage the widespread use of the Internet.[26] Since people have different makes and models of computers, live in different countries or may work in offices with elaborate security systems, how does a message typed on one person's keyboard reach another computer screen halfway around the world?

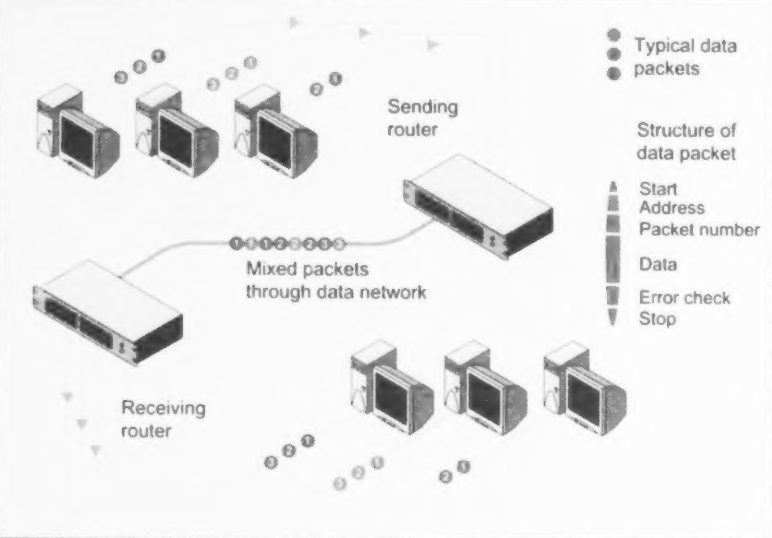
The short answer is that there is an agreed-upon set of protocols (rules) that govern the way various parts of the communications systems (the hardware and software) handle the message.[27] Probably the best known grouping of protocols is the International Organization for Standardization's Open Systems Interconnection Reference Model. This is called the OSI Model and it is composed of seven layers.[28] The OSI Model is not a piece of hardware or software; it is simply a way of thinking about a communication (e.g., an e-mail).

To understand how the OSI Model works one needs to realize that e-mail is broken down into small packages called packets. Additional information is added to each packet (and there could be thousands of packets) in a process called enveloping. For example, if your electronic mail system uses a particular compression technique, this information will be added to each packet. Each packet will also have an address so that it can reach its destination.

You might think of the layers as someone who reads the information on the envelope, decides what to do with the packet and who then hands it off, perhaps with additional information, to the next person (layer).

This information, which is analogous to the address on an envelope sent through the regular mail system, allows the various elements in the communications system (e.g., the hardware, the compression techniques, the security systems) to deal with the packet so that it reaches its intended destination. The information on the envelope also includes a technique to check for errors and a technique to decide if the entire message has arrived.

Figure 3.5 Packet data routing


Typical data packets
Sending router
Structure of data packet
Start
Address
Packet number
Data
Error check
Stop
Mixed packets through data network
Receiving router

Thus, notwithstanding the way the Internet has dramatically altered the way people communicate, the availability of information and the way people use it, technically, the Internet is simply a set of rules for sending messages to a remote mailbox (i.e., the servers provided by the Internet Service Provider). There is no head office for the Internet, no fixed address, regional office or employees. No one works for the "Internet" or draws a salary from the "Internet." It is simply a set of communication rules that people agree to use, much as they agree to use a set of grammatical rules in writing. In other words, grammars are open systems; once you learn the rules, you can use the system to talk to anyone else who has learned the same rules.[24]

Because the Internet is a set of rules for communicating, it presents many of the same regulatory problems to governments as regulating the contents of mail sent through the postal system or a telephone conversation. There are rules (e.g., about using the mail or telephone system for criminal activity) but the vast majority of letters are mailed and telephone conversations completed without any involvement by the government (other than compliance with existing laws dealing with criminal activity or libel and slander).[10]

The United States Federal Communications Commission (FCC) recently had this to say about the Internet:

> The chaotic nature of the Internet may be troubling to governments, which tend to value stability and certainty. However, the uncertainty of the Internet is strength, not a weakness. With decentralization comes flexibility and with flexibility comes dynamism. Order may emerge from the complex interactions of many uncoordinated entities, without the need for cumbersome and rigid centralized hierarchies.[11]

That said, the Internet may not be the technology that will prove the most disruptive.

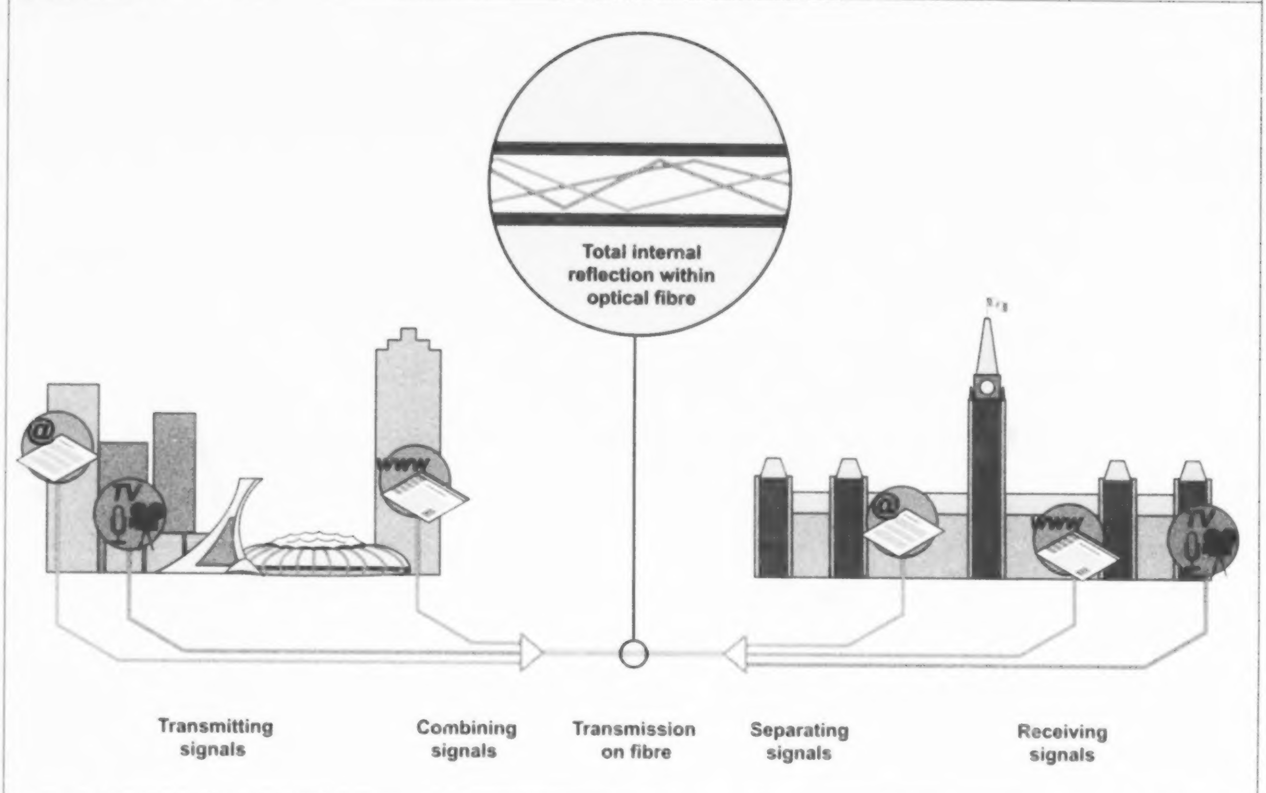
Fibre Optics

Although the Internet has received the greatest attention and unleashed torrents of optimism about the future, it is only one of the so-called "disruptive technologies" that have emerged in the last few decades. Indeed, a strong case can be made that the invention and use of fibre optic technology will cause more disruption in communications and broadcasting than any other invention.[12]

The idea of communicating with light is an old one. During the nineteenth century a number of demonstrations of optical (i.e., light) transmissions were made. In 1878, two years after perfecting the telephone, Alexander Graham Bell demonstrated a device (called the photophone) that transmitted the human voice through the air for a distance of up to 200 meters.

Modern communications with optics is usually dated from the 1950s when Narider Kapany, working at the Imperial College of Science and Technology in England, and Brian O'Brian of the American Optical Company demonstrated the use of a thin glass fibre to transmit light.[13] Over the next 15 years scientists and engineers slowly improved the quality of the glass used in fibre optics so that it could transmit light over a distance of 10 kilometres.[14,15]

Figure 3.6 Optical transmission of data


Total internal reflection within optical fibre
@
TV
www
Transmitting signals
Combining signals
Transmission on fibre
Separating signals
Receiving signals

Lasers are used to send signals along a glass fibre.[16] Digital signals can be sent at different frequencies (i.e., along different channels) and because we are dealing with light, the signals can be sent in different colours. This, in combination with different frequencies and several thousand different colours, allows one fibre to carry a tremendous amount of information. In 1999, researchers at Bell Laboratories demonstrated that it was possible to send 160 gigabytes per second along 300 kilometres of optical fibre using just one colour of light. They then showed that it was possible to send 1,022 different colours of light at the same time along one fibre.[17]

The implications of this simple description of a technical demonstration can be easily misunderstood. But the implications are profound. These demonstrations prove that a fibre thinner than a human hair can transmit more than 2000 television stations at the same time.[18] In effect, the potential bandwidth on a single strand of fibre is roughly equivalent to the bandwidth on the entire backbone network in the United States in the year 2000.[39] As David Farber (professor of telecommunications systems in the computer and information science department at Penn Engineering and a former chief technologist at the Federal Communications Commission) has recently observed, this means that "we're in for a lot of change."[40]

Wireless

The cost of bringing a service to remote areas by telephone or cable has always been expensive. In the world of telephones and cable this was once referred to as "the last mile." The phrase lives on when discussing the problem of delivering broadband access to the Internet.

Satellite technology removed the technical problem of the "last mile" for remote locations wanting access to television and radio signals, but it has not removed "the last mile" for broadband access at a reasonable cost. At this time, high-speed access to the Internet by satellite is much more expensive than high-speed access by cable or telephone.

"The last mile" may also refer to the last few feet required to connect a business or a home to a communications service. At present, most homes and businesses receive broadband access to the Internet either by a cable service or a digital subscriber line (DSL). Several million households in Canada are not on a cable system and DSL only works for a subscriber who is physically located within five kilometres of a telephone exchange.[41]

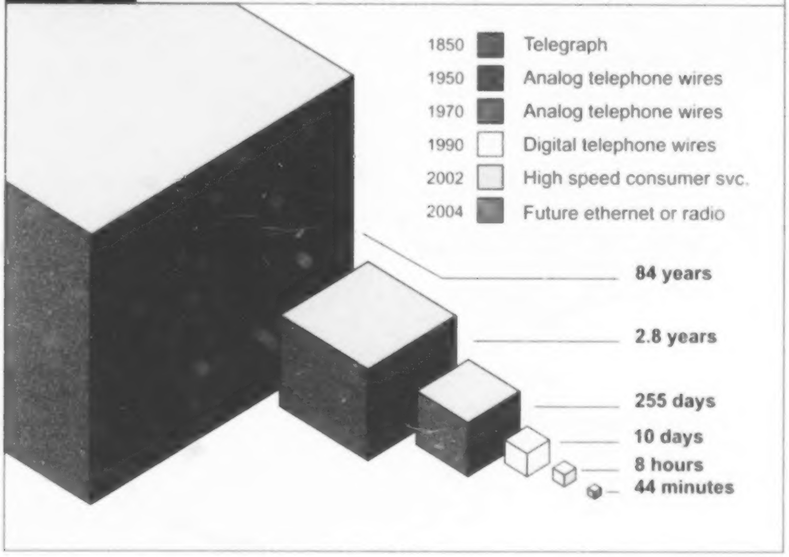
One solution to the problems of lack of access, because of distance or regulatory hurdles, is a wireless broadband network. There are a number of different ways that a wireless network can be installed and the details are, for the purposes of this report, not important. However, it is technically feasible at the current time to connect a neighbourhood to a base station with an access point and deliver broadband access to individual houses.[42]

This ability to deliver broadband to individual houses will have important consequences for Canada's broadcasting system. The main improvements will have to do with the capacity of the "pipe" feeding signals to the consumer or audience. This is frequently referred to as "bandwidth" and is measured in the amount of information transferred per second. You need only a little bandwidth to send e-mail with acceptable speed but you need much more capacity if you are to send a movie (e.g., real time, pay-per-view).

There are a number of technical constraints in providing the bandwidth necessary to have true "pay-per-view" available to every household. Households that have "cable" are likely to have true "pay-per-view" available in the next year.[43] The more serious constraints involve the existing technology (copper wire) that links most households (not on cable) to the telephone system. However, even for these households, existing technologies could be bundled together to make "pay-per-view" a reality.

The key technologies that will make real time, pay-per-view (unicasting) more prevalent will involve bandwidth and storage capacity. At present, it would take eight hours to download a movie with a high-speed Internet connection; via an end-to-end fibre optic line it would take less than an hour.

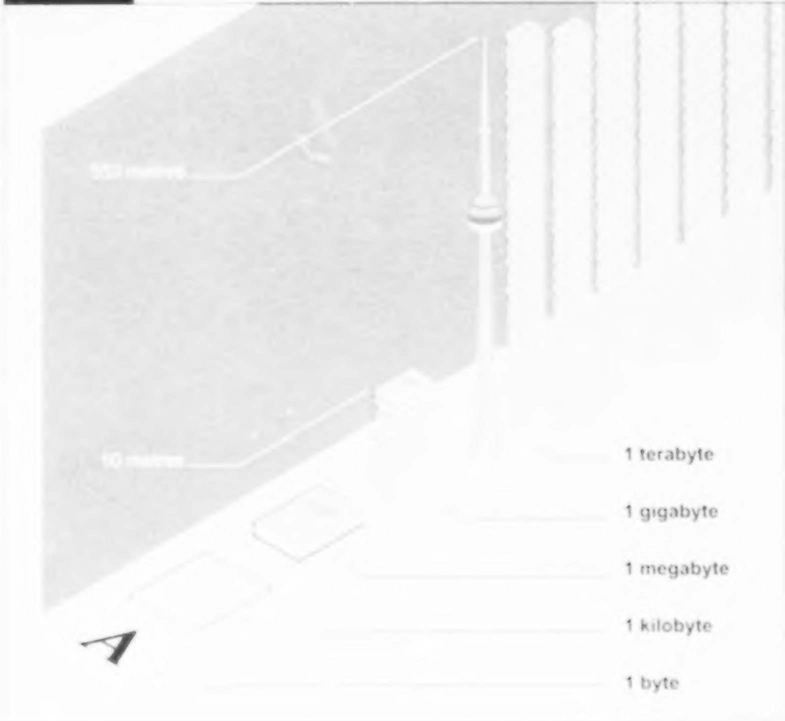
Figure 3.7 Time to transmit a 90 minute video 1850 - 2004



Storage Capacity

Storage capacity has also increased exponentially over the last 20 years. Fifteen years ago people were happy to have a hard drive with a capacity of 40 megabytes. Now relatively inexpensive computers have 40-gigabyte hard drives, which can store up to a dozen 90-minute movies. Research labs have already produced holographic storage devices that have a capacity of 125 GB with an ability to transfer data from the storage device at 40MB per second (available 2003). In 10 years, holographic storage is expected to have a capacity of a terabyte (1000 gigabytes) with an ability to transfer data at 1 GB per second.

Figure 3.8 Storage capacity



Given the present rate of technological progress, it will eventually be feasible to store the entire archive of the United States Library of Congress on a single disk the size of a CD. Seen in this light, it becomes clear why the combination of enhanced bandwidth and increased storage will make it easier for individuals to search out news, music, movies and programs that they want to watch or listen to at a time of their choosing. This is not to say that 'broadcasting' as we currently think of it will disappear. Television did not destroy the radio; radio changed. In the same vein, broadcasting will not disappear but will evolve as audiences continue to fragment over the coming years.

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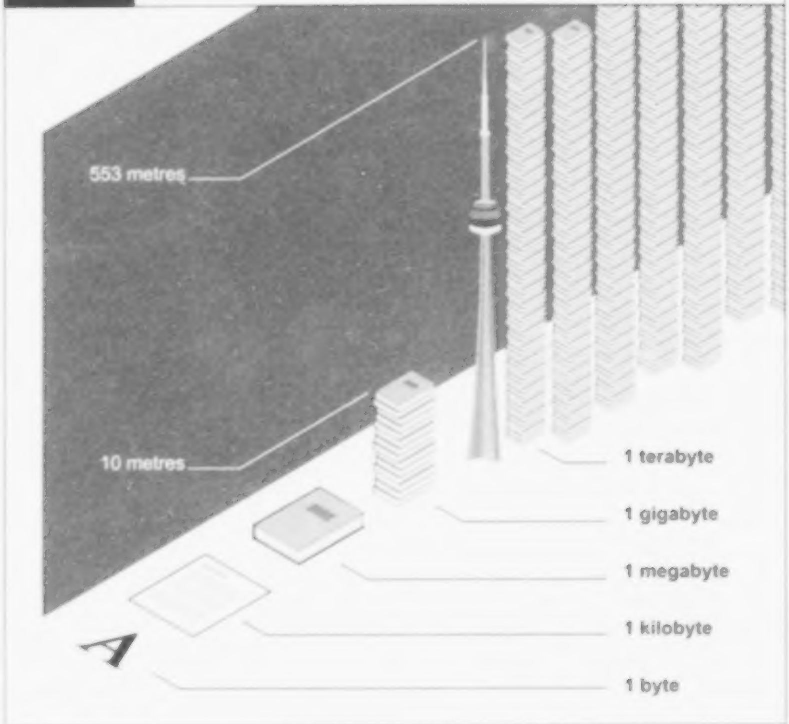

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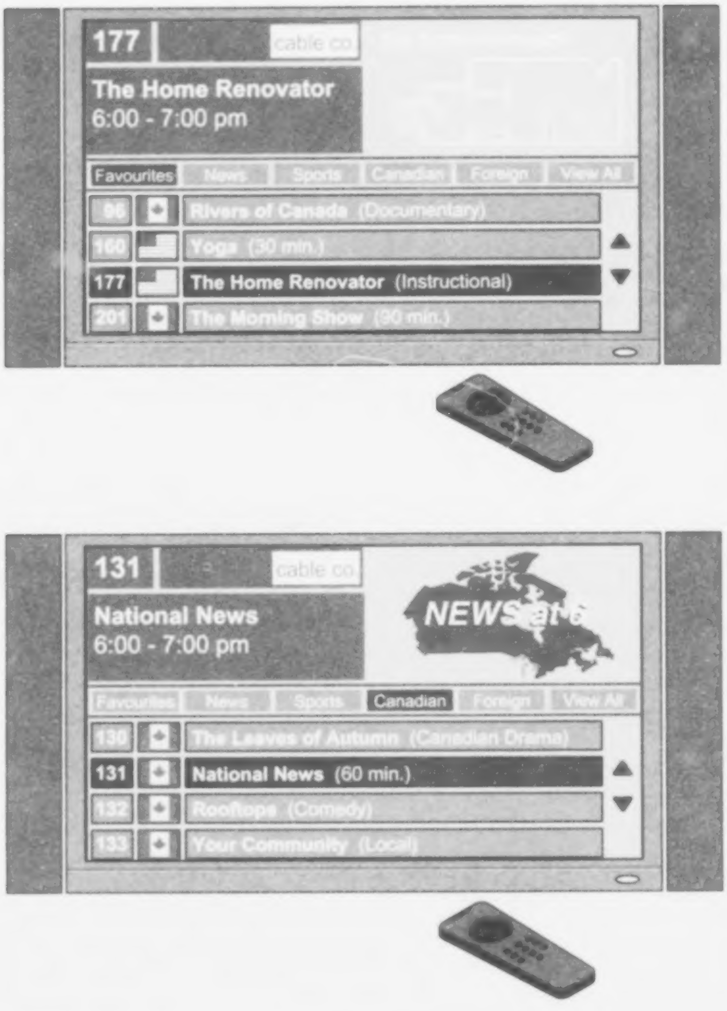
All these changes in broadcasting will by necessity lead to changes in access and delivery. For example, in parallel with the Internet's rapid growth and popularity in the mid-1990s, computer programmers developed sophisticated search engines (e.g., Google and Yahoo!) to help online users locate desired content. Similarly, the growing popularity of satellite television and digital cable has prompted the rapid growth and development of the "television guidance" industry.

Television guidance systems — most commonly referred to as Interactive Program Guides (IPG) — are designed to assist television viewers in locating specific programming content. The world leader in this field, Gemstar-TV Guide International, holds licencing agreements with four of the top six American cable systems and two of Canada's top three cable companies (Shaw Cablesystems and Cogeco). Gemstar's long-term vision is to make its IPG products available to television audiences worldwide. Should this ever occur, it means that the ownership of Canada's broadcasting gateway for both available content and programming information will be entirely owned and controlled by a company outside Canada.

Some idea of what the full use of a set-top technology might look like can be seen if one considers how it can be used in tandem with the personal video recorder (PVR), a device that allows a person to record a television program for viewing at a convenient time.[17] While it will take some time for PVR use to grow, its widespread adoption is almost inevitable for two reasons. First, in a 200- to 300-channel universe people will turn to electronic program guides to help them find what is on. Second, once people commonly use an electronic program guide, it is a simple matter to ask the PVR to record particular shows.

Thus, the multitude of choices available to citizens has created a world of communications where the old regulatory regime (based on the reality that a telephone company had a local monopoly or that spectrum is a scarce resource) is no longer viable. As such, the range of choices offered by the digital world will make it seem — even with regulations — like an unregulated world.

Figure 3.9 Personalized Menu Guide


177
cable co
The Home Renovator
6:00 - 7:00 pm
Favourites
News
Sports
Canadian
Foreign
View All
96 Rivers of Canada (Documentary)
160 Yoga (30 min.)
177 The Home Renovator (Instructional)
201 The Morning Show (90 min.)
131
cable co
National News
6:00 - 7:00 pm
NEWS at 6
Favourites
News
Sports
Canadian
Foreign
View All
130 The Leaves of Autumn (Canadian Drama)
131 National News (60 min.)
132 Rooftops (Comedy)
133 Your Community (Local)

C. Predictions and Emerging Issues

In light of the above discussion it is possible to envision elements of an emerging communications environment and key issues that this report must address. In simple terms, the following events and outcomes are likely to occur over the next few years:

- Analog broadcasting will decline in importance and eventually disappear.

- Digital systems (which are already available to almost all Canadian households) will predominate (e.g., by satellite, cable or high speed connections over standard telephone lines).

- Effective bandwidth (i.e., the speed with which information can be sent to an individual household or an individual) will continue to increase. This process will depend on improvements in compression technologies, processing speeds and changes to networks.

- The choices available (radio, television, newspapers, new media) will continue to increase.

- Audiences will continue to fragment.

- To offset audience fragmentation, companies will offer bundles of services (e.g., radio, television, Internet and communications via satellite).

- The distinctions between broadcasting and telecommunications will continue to erode to the point where there is almost no point talking — from the perspective of the consumer or an audience — about the differences between the two areas.

- Individuals will think in terms of subscriptions (to radio, television, newspapers and information services).

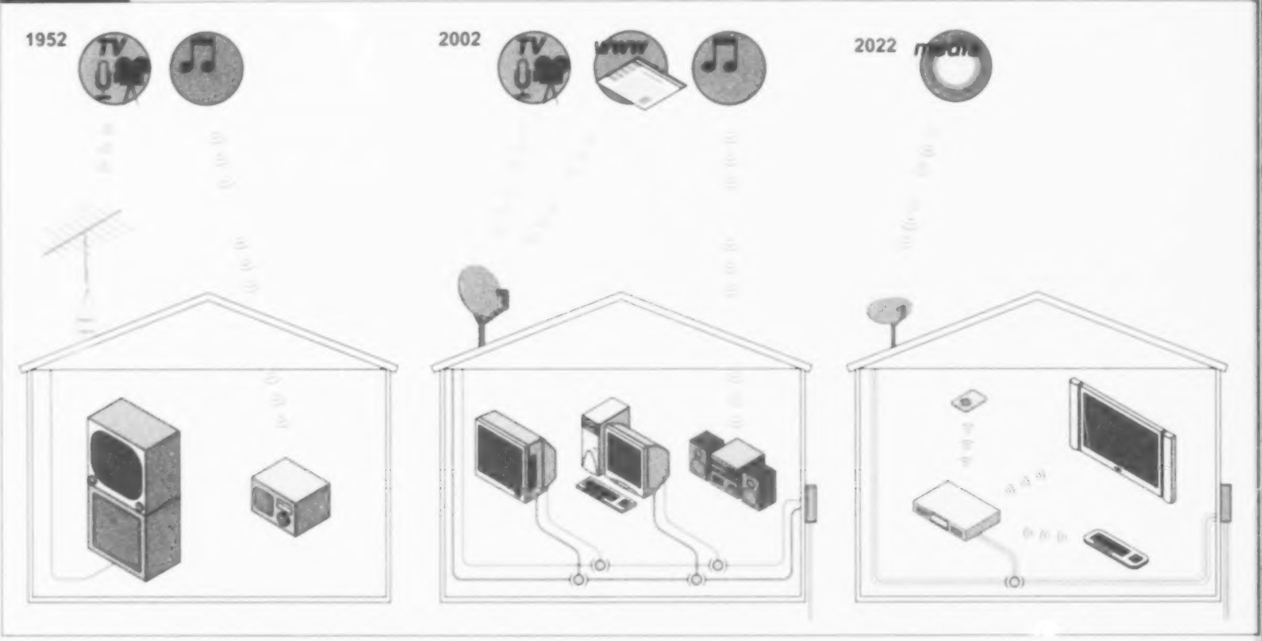
- Subscriptions will continue to increase in importance.

- Households will have a "seamless" communications system (i.e., they will not think about the differences between the television set and the computer monitor).

- Individuals will have one or more multifunctional personal communications devices that will function as a cell phone, pager, digital assistant and be capable of receiving "streaming" media (i.e., sound and video).

- Individuals will be able to choose among digital offerings (e.g., among 2,500 Internet radio stations) by creating their own menu of selections or by using a menu system developed by a third party.

Figure 3.10 Media in the home over time



While it is, of course, impossible to make entirely accurate predictions about the coming changes, it is possible to make some informed guesses about the likely shape of the future. This is not to say that anyone knows the exact shape of things to come (e.g., how many and what kind of channels there will be in five years time). However, it is safe to say that in the coming years, broadcasting will be driven by changes made possible because of current developments in technology and the attempt by companies to provide new or new bundles of services to audiences.

The way people use the broadcasting system has changed substantially over the last 50 years. Television became popular during the 1950s and changed the importance and use of radio. The emergence of cable systems in the 1970s significantly increased the number of channels that one could access and led to the growth of channels specializing in particular topics (history, biography, sports). In the 1980s it became possible to rent movies (in the form of videos). During the 1990s the Internet became a workable protocol for audiences to use to listen to "Internet radio," watch "streaming video" or access "electronic" newspapers that are updated several times each day.[18]

There are three constants involved in this process. First, new technologies have made it easier for audiences to exercise choice about how they will watch something. For example, many people may never go to a movie theatre, as they prefer to watch movies on television or on video. Second, the number of choices has increased (e.g., from 3 or 4 television channels in 1955 to more than 350 channels in 2003). Third, audiences have used these new services to "time shift" (i.e., watch or listen to what they want when it is convenient). These changes in turn have fundamentally altered our notions of what a "broadcast" is.

As this chapter has shown, audience fragmentation results from increased choice made possible by underlying technological changes in the capacity of the communications system. Technical capacity increased more in the 10 years between 1992 and 2002 than in the 100 years between Bell's first long-distance telephone call in 1878 and 1978. Increases in technical capability, however, will not necessarily come from engineers and scientists working in the area of communications. As a recent article in *Scientific American* pointed out:

> Crucial advances in pivotal fields such as climatology, medicine, bioscience, controlled fusion, national defence, nanotechnology, advanced engineering and commerce depend on the development of machines that will operate at speeds at least 1000 times faster than today's biggest supercomputers.[19]

Thus, just as Fourier's work on heat, or early work on fibre optics was not carried out with the idea that it would be useful in the area of communications or broadcasting, it is equally probable that work in nanotechnology or bioscience will produce theoretical or practical results that will find an application far from their original applications. For this reason, it is likely that the ability to send programs to those who are interested and to develop whole new areas of entertainment (e.g., games and simulations) will only increase.[20]

Endnotes

[1] Continuous changes in the electromagnetic wave are used to transmit information (e.g., the dots and dashes of the Morse code). The technique of changing the characteristics of the electromagnetic wave is called "modulation."

[2] Since the electromagnetic spectrum does not use the "air" to travel, the phrase "the airwaves" as in "the public owns the airwaves" is misleading. More precisely, governments regulate the use of parts of the spectrum (e.g., the use of x-rays) for human safety. Safety was the first reason that radio communications (with respect to communication with ships at sea) were regulated.

[3] If the human eye could "see" waves that were absorbed by the atmosphere, there would be very little difference between day and night and our world would be visually chaotic.

[4] The movement of a boat from the top of a wave to the bottom and return to the top is considered one cycle. If the boat does this only a few times an hour the boat trip will probably be a pleasant one. If the boat rises, falls and rises many times a minute the trip will probably be unpleasant. In technical terms, the more frequent the cycle the more unpleasant the boat ride.

[5] Cycles per second are usually referred to as hertz when one talks about electromagnetic waves. One hertz is one cycle per second or, if we are thinking about boats, a completed event (the rise, fall and rise of the boat) per second.

[6] See Appendix 6 for a timeline of advances in broadcasting (1880-2003).

[7] The most well-known invention from this period is the radar, which uses electromagnetic waves. Radar is an acronym formed from the first letters of radio, detecting and ranging.

[8] Tubes were always breaking and had a very short lifespan if exposed to vibration (e.g., on airplanes). The military, therefore, was interested in something more robust that used less power and occupied less space. The transistor was invented in 1947; unlike a tube, you could drop a transistor on the floor and it would keep working. A transistor is a semi-conductor and uses the same fundamental principles that early radios with a crystal used.

[9] As early as July 1941 Canadians in border regions could receive over-the-air television signals from the United States.

[10] The early telegraph used one strand of copper wire, the telephone used a pair of wires, then a twisted pair, and later the coaxial cable was developed. Each improvement allowed more information to be carried. Wire technology improved substantially between the invention of the telegraph and cable but the underlying principles are the same.

[11] Multiplexing enables multiple devices (or channels) to share one telephone line (or one cable). Multiplexing was first developed for analog telephone lines but is a technique widely used in analog and digital transfers of information. For example a T-3 telephone line can carry 672 conversations over one line at a speed of 45 megabits per second.

[12] It is important to note that Canadians living in areas not served by cable must rely on a set-top or roof-top antennae to receive broadcast signals. This type of transmission is typically called "over-the-air" or "off air." Broadcasters that use these signals are referred to as "conventional" broadcasters. The term conventional helps distinguish between the newer specialty channels (which are not broadcast) and the older over-the-air stations. That said, almost no one watching television today says: "I'm watching conventional television."

[13] An accessible history of the period during the 1990s is contained in Chapter 2 of Matthew Fraser's *Free for All: The Struggle for Dominance on the Digital Frontier* (Toronto: Stoddart, 1999).

[14] www.athabascau.ca.

[15] Television cannot be delivered north of 82N degrees (because of the curvature of the earth) and so some communities in the far north cannot receive satellite signals for television.

[16] See chapter 5. Mr. Michael Helm, from Industry Canada told the Committee that it has been at least four or five years since he last heard a complaint concerning television reception.

[17] See chapters 7 and 10 for more on Northern and Aboriginal broadcasting.

[18] Statistics Canada (various years), *Household facilities and equipment*, Catalogue 64-202 Annual; Catalogue 64-202S (various years), *Revised Estimates* (1977-87); Statistics Canada (various years), *Household Facilities by Income and Other Characteristics*, Catalogue 13-218-XPB; Statistics Canada (various years), *Survey of Household Spending*, Catalogue 62M0004XCB; CRTC, *1976-1981 Industry Statistics and Financial Summaries, Canada, Regions-Provinces (Cable)*; CRTC, *1977-1982 Industry Statistics and Financial Summaries, Canada, Regions-Provinces (Cable)*; CRTC, *Cable Television Statistical and Financial Summaries 1979-1984, Canada, Regions and Provinces*; CCTA *Annual Report 2001-2002*.

[19] Sources: Statistics Canada (various years) *Household facilities and equipment*, Catalogue 64-202 Annual; Catalogue 64-202S (various years) *Revised Estimates* (1977-1987); Statistics Canada (August 1947) *Heating Facilities, Radios and Telephones in Canadian Homes — August 1947*; Statistics Canada (October 1949) *Radios and Household Electrification*, October 1949; Statistics Canada (various years) *Survey of Household Spending*, Catalogue 62M0004XCB.

[20] The ongoing utility of Fourier's discoveries is interesting. Jean-Baptiste Joseph Fourier (1768-1830) was a French mathematician and physicist who made a lasting contribution to our ability to use electromagnetic waves for the purposes of communication long before Samuel Morse or Alexander Graham Bell invented their communication devices. His proof that all waves could be represented as the sum of a number of sine waves is the foundation on which our use of electromagnetic waves rests. This work was done before Faraday or Maxwell's work with electromagnetic waves and shows that discoveries or knowledge in one area can have interesting applications in another. In this case Fourier's studies of heat flow, which were done without any knowledge that they would ever be applied to broadcasting, or that broadcasting would ever exist, have been of fundamental importance to our ability to develop communications systems that use electromagnetic waves. (Fourier demonstrated that any mathematical curve could be described as a sum of a number of sine waves.)

[21] Other number systems exist (e.g., to the base 8 or the base 16). The hexadecimal system (base 16) is used to program computers. It has been alleged, but not proven, that some researchers think in octal (base 8).

[22] Binary digits can be represented in a number of ways. Streams of binary bits (0s and 1s) can be coded into radio waves as sudden changes in strength (amplitude). This is an example of the use of modulation. They can be represented by the presence or absence of an electric charge (1, 0). Particles on a hard disk can be magnetized in one of two directions. On a compact disc they can be represented as long or short pits.

[23] Changes do have to be made to the overall system but the physical cable does not have to be changed.

[24] See Appendix 7 for brief history of the Internet.

[25] Canadian content is discussed in considerable detail in Chapter 5.

[26] E-mail is often referred to as the Internet's "killer application."

[27] It is also important to remember that the system has to deal with a number of factors that can introduce errors into the message or cause delays. These factors can include sunspot activity, the presence of electric motors and fluorescent lights that are all sources of electromagnetic waves (radiation) that can cause problems.

[28] The OSI Model layers are called: Interconnection, Application, Presentation, Session, Transport, Network, Data Link and Physical.

[29] The Internet grammar, or Internet Protocol (IP), is a subset of another grammar called the Transmission Control Protocol (TCP) or TCP/IP. The TCP/IP has five layers while the OSI Model has seven.

[30] Internet regulation is discussed in Chapter 14.

[31] Kevin Werbach, *Digital Tornado* (Washington, D.C.: Federal Communications Commission, 1997), p. ii.

[32] Technically, the whole field is referred to as optoelectronics or photonics.

[33] The device was used to conduct an image from a source to a destination and was used for inspections of industrial equipment and medical applications.

[34] This was done without a repeater. Later developments allowed the signal to be sent 50 kilometres.

[35] The glass fibre has a diameter slightly thinner than a human hair (between 50 and 65 microns).

[36] Laser is an acronym for light amplification by simulated emission of radiation.

[37] BBC News, 14 November 1999.

[38] Single strands of fibre are combined with other strands, given a protective cladding and buried in trenches or run through pipes and duct work in cables that can have as many as 100 single fibres. While the capacity of fibre varies with the type and when it was installed, it is safe to say that relative to current demand there is virtually infinite capacity to transmit information. Indeed, it would be possible to dedicate a single strand of fibre to carriage of television signals and carry virtually every television station in the world (i.e., 2000 of them).

[39] Knowledge@Wharton special to CNET News.com, 20 September 2000.

[40] Ibid.

[41] The spread of broadband access has also been hampered by various regulatory hurdles and disputes within the industry about who will control what and how various services will be delivered.

[42] A radio base station (called a network access point — NAP) is connected to the Internet. Homes in a neighbourhood connect to the base station with their own antenna. There are a number of different ways that this can be done. One workable solution involves using a new communications standard known as 802.11.

[43] A number of movie companies in the United States recently announced their intention to create a "library" of some 350 films that will be available "on demand." For a small fee ($4.00 has been suggested) a household could download a copy of a film that would be available for two days to watch much as one watches a rented video.

[44] *PC Magazine*, 4 September 2001, p. 78.

[45] Interestingly, there are some signs that radio is overtaking television partly because of new ways of listening such as via the Internet. For example, in the United Kingdom, for the second time in a year, daily hours for listening to the radio have beaten those for watching television with an average of 3.48 compared with 3.46 (*The Independent*, 3 August 2001).

[46] For example, popular television shows in the 1960s might have had as much as 75% of the audience. This era has passed. Today, a popular television show such as *Survivor* is a serious success with 30% of the audience. Sporting events such as the Super Bowl or the World Series rarely have more than 50% of the audience. These percentages are likely to decline in the future as the audience continues to fragment.

[47] Current PVRs can store between 30 and 280 hours of programming. Moreover, it is now possible to buy computers that will record more than 300 hours of programming.

[48] Streaming video and audio can be defined as a means of starting to play a message while the rest of it is being copied. Streaming uses compression to make voice, video and data smaller so that it can be transmitted in less time. Streaming video and audio are used in broadcasting video and audio over the Internet.

[49] Thomas Sterling, "How to Build a Hyper Computer," *Scientific American*, July 2001, p. 39.

[50] It is quite remarkable that the field of computer games (e.g., the Nintendo Game Cube, the Xbox and others) is an industry larger than the movie industry yet it only emerged over the last 25 years. In fact, as J. Patel of the Deutsche Bank recently noted, "We believe that the interactive entertainment market is increasingly taking on the properties of the traditional media/entertainment industries, as well as capturing a disproportionate share of consumer consumption of in-home entertainment in terms of time and dollars." www.gignews.com/2002andbeyond.htm.

BACKGROUND

Chapter 4

Fragmenting Audiences

> In the view of the CAB and its members, the 1991 *Broadcasting Act* has worked well. It has successfully provided a legislative framework under which the Canadian broadcasting system has been able to flourish and adapt over the past 10 years.
>
> *Canadian Association of Broadcasters, Brief*

> What we have reluctantly concluded is it is now time to admit we have failed. After half a century of government support measures for Canadian television, and an even longer period of support for movies, it remains virtually impossible for me to find a Canadian story on either the big or small screen.
>
> *Thor Bishopric, President, Alliance of Canadian Cinema, Television and Radio Artists, Meeting of Standing Committee on Canadian Heritage, 9 May 2002*

> We cannot make Canadians watch more Canadian programs. No one can, and no one wants to.
>
> *Robert Rabinovitch, President, CBC, Meeting of the Standing Committee on Canadian Heritage, 14 March 2002*

After its review of several hundred submissions and the many hours of witness testimony that it gathered, the Committee notes that there is a distinct range of views about the state of the Canadian broadcasting system. Some witnesses believed that there has been a good deal of success, but that there are problems and issues to deal with. Others were more pessimistic, including some who believe that we have failed. Some were more matter-of-fact and offered reminders that any success in Canadian broadcasting hinges on finding a balance between cultural and economic objectives.

To help make sense of these different views, this chapter presents information about the various measures that are used to talk about radio listeners and television audiences. It discusses the concepts of prime time, types of programming and the availability of radio and television programs. Thereafter, it presents selected summary information on available Canadian programming and Canadians' listening and viewing habits. This chapter also shows how uses of certain technological innovations over the last half century have reshaped our communications environment and, by extension, the leisure time activities of Canadians. Finally, it describes some of the ways in which the Internet revolution has precipitated significant and ongoing changes in media consumption behaviours and expectations.

A. Who's Listening, Who's Watching?

The way people use the broadcasting system has changed substantially over the last 50 years. Following its introduction in the early 1950s, television quickly became popular and, as a result, altered the uses and importance of radio. The emergence of cable syste)ms in the 1970s increased significantly the number of channels that could be accessed and made possible the introduction of channels that specialize in particular topics. In the 1980s, videocassette machines made it possible to record television programming and view pre-recorded movies. During the 1990s the Internet became a workable system for people to listen to audio, watch streaming video or subscribe to electronic editions of newspapers that are updated several times a day.[1] Most recently, viewing by appointment has become easier than ever before with the introduction of the personal video recorder.

In the early days of radio or television a "broadcast" was a program transmitted at a specific time to an audience. If you did not tune in at the right time, you "missed" the show. Those who grew up in the 1950s and 1960s probably still think of broadcasting this way. But as seen by the review of technological innovations outlined in Chapter 3, notions of broadcasting have shifted from an emphasis on reaching a mass audience to providing the widest possible range and volume of programming content.

Although it is highly unlikely that anyone will offer an unlimited number of television services in the near future, it is important to remark on a number of important implications that are related to this capacity.

- First, the majority of households in Canada no longer rely on over-the-air signals (i.e., the radio frequency spectrum) for the reception of broadcasts.

- Second, there is no longer an absence of choice.

- Third, there will be further audience fragmentation as more distribution services begin offering subscriptions to different types of programming on demand.

These changes, all of which were happening to some degree as the Committee carried out its study, have important consequences for the way the government organizes its efforts to promote the production, distribution and exhibition of Canadian programming.

The remainder of this section reviews what can be said about Canadian programs, their overall availability, how they are watched and the implications of existing trends.

Definitions of Listening and Viewing

To gauge the achievements of the Canadian broadcasting system it is important to distinguish between radio and television. It is also necessary to distinguish among the various categories of programming such as sports, news, children's and drama.[2]

The most common viewing statistics collected by the broadcasting industry are: *penetration, coverage, reach, audience size, ratings, share,* and *average minute audience*. These terms are defined by the industry as follows:

- Penetration: The number of households with a radio or television set.

- Coverage: The extent of a medium within a geographic area.[3]

- Reach: The estimated number of different persons who tune to a station or to television for at least one quarter hour within a specified time period.[4]

- Audience size: The share of television or radio sets that are turned on. Measured either in raw numbers or as a percentage. The broadcasting industry generally uses a measure of the average quarter hour audience, which is determined by adding all the individual quarter hour audiences and dividing by the number of quarter hours involved.[5]

- Rating: The average quarter hour audience expressed as a percent of the population in a geographically defined area.

- Share: The percentage of the total number of people watching television who are tuned into a particular station or program.

- Average Minute Audience (AMA): The average number of viewers tuned in each minute of a program.

As seen above, there are several measures of audience for a broadcast, including: *audience size, reach, share* and *average minute audience*. Subsequent sections will provide some examples of audience data for English and French television. Before proceeding, however, it is important to point out that the broadcast industry's measurement methods for audience size differ from the way other activities tend to be reported. As Nielsen Media Research Canada notes:

> a "TV rating" is not the same as the common usage of the word "rating". Nielsen Media Research does not provide qualitative evaluations of how much a program is "liked" when we rate programs. The TV rating is only the simplest and most democratic measure of the audience: how many people watched. Programs which have larger audiences are, by definition, the successful ones. Ratings numbers which you may have seen are the average audience rating, or the percent tuned to a particular program during the average minute.

A second difference can be illustrated by looking at the difference between overall citizen participation in an election and reported television audiences. Election turnout is normally reported as *the percentage of people who voted* based on the *total number of eligible voters*. However, when an audience share for a television show is reported, the baseline is not the total number of televisions that *could have been turned on*, but the *percentage of people who were watching a show* based on the *total number of people who were watching television* at that same time.

This interpretation of audience share has great utility for advertisers, but can be misleading if used to appraise the success of Canada's broadcasting policy. As the Canadian Film and Television Production Association (CFTPA) recently explained: "traditional forms of audience measurement methodology serve the purposes of advertisers [and] are not necessarily an indication of the true audiences for Canadian programs."[9] For this reason, the CFTPA believes a new measure, based on the total number of Canadians who watched at least 30 minutes of a Canadian show during a full season of telecasts, should be used to appraise the "real impact" of Canadian programming. This proposed approach would be called "season reach."[10] For example, a measure of "season reach" might be two or three times the traditional audience share numbers.

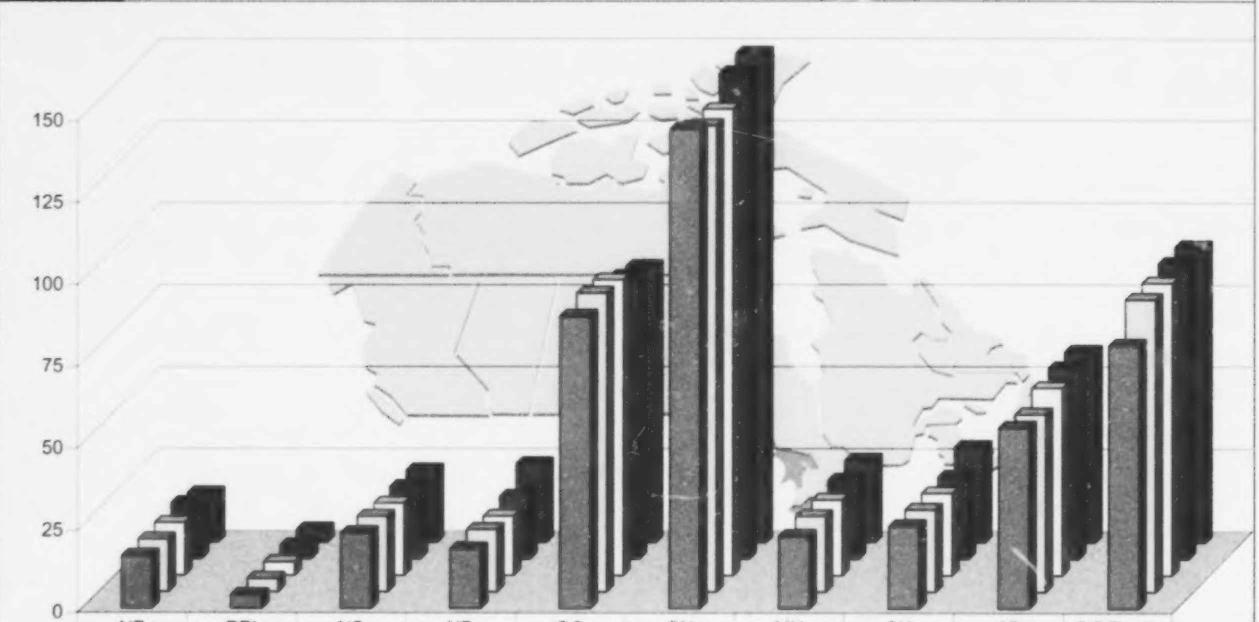
Seen in another light, one could also imagine the use of a measure called "episode reach." Such a measure would collect viewing data for the broadcast of a single episode and a set number of repeats of the same show (on the same, or on another channel). For example, a typical episode of *Da Vinci's Inquest* enjoys an audience of about 700,000. If one were to add the audience data for two repeats of the same episode, it is quite probable that the number of viewers would exceed 1.5 million. With this in mind, Chapters 5 and 19 make recommendations concerning the need to improve existing data collection and reporting methods for the Canadian broadcasting system.

It is also important to remember that there are differences between the way people use radio and television. Radio listening tends to be concentrated during the day, while in a car or at work, whereas television viewing tends to be done in the home. Audiences for television tend to be highest between 4:00 p.m. and midnight (i.e., after school or a workday), a period of which varying portions have been, or are referred to, as "prime time."

Radio

The situation that confronted the Aird Commission in the 1920s, when Canadians were justifiably concerned about the absence of Canadian radio programming, no longer exists. As figure 4.1 shows, there are 500 commercial radio stations[11] owned and operated by Canadians that produce and deliver thousands of hours of Canadian music and programming each year.[12]

Figure 4.1 Commercial radio stations in Canada by province, All languages, 1997-2001

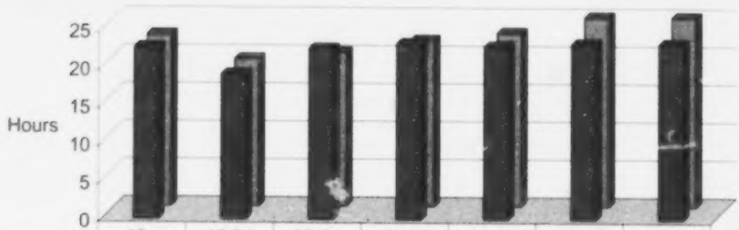


	NF	PEI	NS	NB	QC	ON	MN	SK	AB	BC/Territ.
■ 1997	16	4	23	18	89	146	22	25	55	80
□ 1998	16	4	23	19	91	142	23	25	54	89
□ 1999	16	4	22	18	90	142	23	25	57	89
■ 2000	17	4	22	19	86	148	24	25	58	90
■ 2001	15	4	22	24	84	149	25	29	58	90

Most radio stations are intensely local, covering local news, events and advertising local businesses. The exception to this is the Canadian Broadcasting Corporation's English- and French-language national radio services.

According to Statistics Canada, in 2001, Canadians listened to approximately 21.7 hours of radio each week. Figure 4.2 shows fall 2001 radio listening patterns by age and gender.

Figure 4.2 Radio listening patterns by age and gender, fall 2001



	18+	18-24	25-34	35-49	50-54	55-64	65+
■ Men	22.6	19.1	22.5	23.2	22.8	23.2	23.2
▨ Women	22.6	19.4	20.3	21.9	22.9	25.3	26.4

Additional statistics on Canadian radio listeners' preferences are presented in Chapter 8.

Television

Canadian television services are divided into different categories determined by the technical means they use to reach audiences and the types of programming they offer. This report will mostly talk about two types of broadcasters:

- Conventional broadcasters: those that reach their audiences via an over-the-air signal or a distribution undertaking, such as cable or satellite.

- Pay and specialty services: those that can only be obtained by audiences via a distribution undertaking.

Conventional broadcasters usually offer a broad range of programs (e.g., local and national news, drama, game shows, sports), whereas specialty services tend to focus on a specific theme (e.g., sports, cartoons, news). CBC, CTV, Global, TVO/TFO, Citytv, A-Channel, Radio-Canada, TVA, TQS, TéléQuébec are the most well-known examples of English and French conventional broadcasters.

As for specialty services, there are two varieties: analog and digital. Analog specialty services have been available since 1984. Canada's English and

French-language analog pay and specialty services are listed in figures 4.3 and 4.4.

Figure 4.3 Canadian English-language analog specialty channels

Launch date	Channel	Genre
Sep-84	MuchMusic	Music Video - Rock/Altern./Rap
	TSN - The Sport Ntwk	Sports
Sep-88	YTV	Kids/Teens/Family
	Weather/Météomédia *(b)*	Information - Weather
	VisionTV	Religious (non-profit)
Jul-89	Newsworld	News & Information (non-profit)
Jan-95	Showcase	Drama & Film
	Bravo!	Perform. & Visual Arts
	Discovery Channel, The	Nature/Science & Tech.
	W (Women's TV Network)	Lifestyle - Women
	CMT - Country Music TV	Music Video - Country
	Life	Doc. & Information
Fall-97	The Score	Sports - Video Highlights
	Space	Science Fiction
	Teletoon *(b)*	Animated Programming
	History Television	Information - History
	HGTV	Lifestyle - House & Garden
	Comedy Network, The	Comedy
	Outdoor Life Network	Info - Adv./Outdoor/Recreat.
	Prime TV	Lifestyle - 50+
	Newsnet	News - Headlines
Mar-98	Pulse 24	News & Inf. - Reg. Ont.
Fall 98	MuchMoreMusic	Music Video - Adult Contemp.
	Treehouse	Children
	Rogers Sportsnet	Sports
Fall 99	CLT - Cdn. Learning TV	Learning / Education
	Star-TV	Entertainment Info
Fall 00	ROBTV	News - Business
	Food Network Canada	Lifestyle - Food
	Talk-TV	Information - Talk

Figure 4.4 Canadian French-language analog specialty channels

Launch date	Channel	Genre
Sep-88	VRAK TV	Children / Family Progr.
	MusiquePlus	Music Video
	RDS	Sports
	TV5	Cdn. Intern. Franc. Progr. (Non-Profit)
	Météomédia/Weather *(b)*	Information - Weather
Jan-95	Canal D	Doc / Films / Series / Perf. Arts
	RDI	News & Information (Non-Profit)
Sep-97	Canal Vie	Lifestyle / Health
	LCN - Le Canal Nouvelles	News & Information
	Musimax	Music Video - All Forms
	Télétoon *(b)*	Animated Programming
Jan-00	Canal Évasion	Tourism / Adv. / Travel
	Canal Z	Science/Tech/Sc.Fiction
	Historia (Canal Histoire)	History
	Séries+ (Canal Fiction)	Cdn. & Intern. Drama Progr.
Fall 01	ARTV (Télé des arts)	Arts

As for pay services, figure 4.5 shows the English- and French-language channels to which Canadian may subscribe.

Figure 4.5 Canadian pay television services

Launch date	Channel	Language
1983-84	SuperÉcran	French
	MovieCentral	English
	TMN	English
1988	Family Channel, The	English
1992	Viewers Choice (Home Theatre)	English
1995	Viewers' Choice	English
1997	MovieMax	English
	Moviepix!	English
	Canal Indigo	French
	Canal Indigo	French
	Viewers Choice	English
	Viewers Choice Canada	English
2000	Bell ExpressVu	Both
2001	Bell ExpressVu	Both

Canadians also receive a number of foreign services, most of which are American. Those American services that have been granted access to Canada's broadcasting market by the CRTC are listed in figure 4.6.

Figure 4.6 American television services available to Canadians

CBS - 9 Independent Stations
FOX - 7 Independent Stations
NBC - 8 Independent Stations
PBS - 7 Independent Stations
8 Superstations
WUAB-TV, Cleveland (Independent)
American Movie Classics
ART America
BBC World
Black Entertainment Television (BET)
Cable News Network (CNN)
Cable Satellite Public Affairs Network (C-Span)
CNN Headline News (CNN-2)
Comedy Central
Consumer News and Business Channel (CNBC)
Court TV
Discovery Wings
Eternal Word Television Network
Game Show Network
Lifetime Television
Oxygen Network
Playboy TV
Speed Channel
Arts and Entertainment Network (A&E), The
Filipino Channel, The
Golf Channel, The
Learning Channel, The
National Network (TNN), The
The Silent Network
The Weather Channel (TWC)
Turner Classic Movies
TV Land
WMNB-TV: Russian-American Broadcasting Company

Figure 4.7 Digital television services available to Canadians, Sept. 2002

Channel	Genre
BPM:TV (The Dance Channel)	Dance
Edge TV	Alternative
MTV2 (Music 5 - Pop)	Pop
MuchLOUD	Hard Rock / Alternative
MuchVibe	Urban
BBC Canada	UK Drama
DejaView (Pop TV)	Classic Drama
Drive-in Classics	B Movies
Independent Film Channel, The	Indie Film
Lonestar (Adventure)	Action / Western Drama
Moviola (Late Night Vidiots)	Short Film
Mystery (13th Street)	Mystery
Scream (HorrorVision)	Horror Drama
Showcase Action (Action Channel)	Action Drama
Showcase Diva (Romance Channel)	Romance Drama
TV Land (Retro)	Classic Drama
ESPN Classics (Classic Sports)	Classic Sports
Fox Sports World	Cricket / Rugby / Soccer
Leafs TV (Maple Leaf Channel)	Maple Leaf Hockey
NHL Network, The	Hockey
Racing Network Canada, The	Horse Racing
Raptors NBA TV (Raptors Basketball Channel)	Raptors Basketball
WTSN (Women's Sports Network)	Women's Sports
Xtreme Sports	Extreme Sports
BBC Kids	Kids & Youth
Discovery Kids	Kids & Youth
High School Television Network (HSTN)	Kids & Youth
MTV Canada (Connect)	Teen
CTV Travel (Travel TV)	Travel
Court TV Canada (Law & Order Channel)	Law & Order
Fashion Television: The Channel	Fashion / Art
Men TV (M)	Men
PrideVision	Gay / Lesbian
SexTV: The Channel (Relationship TV)	Sex / Relationships
Animal Planet	Animals
Biography Channel, The	Biographies
Canadian Documentary Channel, The	Documentary
Discovery Civilization	People / History
Discovery Health (Health Network Canada)	Health
green channel, the	Environmental Issues
National Geographic Channel	Geography/ Science
One: Canada's Mind, Body and Spirit Channel	Holistic Health
Country Canada (Land and Sea)	Rural Info & Entertainment
iChannel (Issues Channel, The)	Public Affairs
MSNBC Canada	US & Cdn. News
Book Television: The Channel	Literature
techtv (ZDTV Canada)	Technology
All TV (Doragi Television Network)	Korean
ATN Alpha Punjabi	Punjabi
ATN B4U Hindi Movie Channel	Hindi
ATN Tamil Channel	Tamil
Festival Portuguese Television	Portuguese
Inner Peace Television Network	Religious / 7 lang. / Catholic
ITBC Television Canada (NTI Tamil Serv.)	Tamil
Odyssey II	Greek
S.S.T.V.	50% Punjabi & 25% Hindi
Tamil Vision	Tamil

Apart from analog services are another 260 pay and specialty channels that were licenced for digital distribution in Canada by the CRTC in 2000. To date, nearly 60 of these have been launched and made available to subscribers via cable or satellite. These services are listed in figure 4.7.

Finally, there are four over-the-air multilingual ethnic television stations, operating from Toronto (OMNI 1 and OMNI 2), Montreal (CJNT) and Vancouver (MVBC). There are also five analog Canadian ethnic specialty services (available on a discretionary basis): Fairchild TV, Talentvision, SATV, Odyssey and Telelatino. Furthermore, in 2000, the Commission authorized more than 50 ethnic digital specialty and pay services in a variety of languages. To date, eight specialty and two pay services have been launched (see figure 4.7).

Programs Types

As noted above, conventional broadcasters tend to focus on general types of programming, whereas specialty channels have a much more specific focus. Not surprisingly, different channels attract different audiences. Thus, to understand what is being viewed, it is necessary to pay particular attention to the kinds of programs offered.

Audience interests have changed considerably since the early days of television. These changes have in turn led to changes in the definitions used for programs. This makes it very difficult to compare a given time period, such as 1963, with the situation in 1993 or 2003.

It is also important to note that the definitions used to describe programming categories were created by regulators and governments for administrative purposes. For example, the 1957 report of the Royal Commission on Broadcasting identified the following categories of television drama: *serious, domestic, comedy, crime, western, action and science fiction, romantic, musical comedy* and *other*. During the period that this committee was conducting its study of broadcasting, CBC Research was using five categories of drama: *movies, action/adventure, situation comedies, reality programs* and an *other* category that included miniseries and soap operas. The drama and comedy category used by the CRTC, which is presented in Chapter 5, has seven different types of programs, one of which includes puppet shows.

A further difficulty is that categories may not accurately reflect what analysts might want or expect. This means that one must be very careful when making claims about what Canadians are watching, or about the overall health of the system. The best example of this is the CRTC's decision to group drama and comedy in one category, an aggregation that makes it almost impossible to separate overall audiences for drama or comedy.

Prime Time and Scheduling

Since the earliest days of television, most viewing has taken place during the evening hours. This period is referred to as the "peak viewing period" or "prime time" and has been defined in many different ways over the past five decades. For example, the Board of Broadcast Governors (BBG) and later the CRTC required Canadian television stations to fill 55% of their broadcasting day with Canadian programs and 40% between 6:00 p.m. and midnight. Today, CRTC regulations emphasize the period between 7:00 p.m. and 11:00 p.m., because this is the time when television audiences are typically at their largest. While the period from 7:00 p.m. to 11:00 p.m. is important, it is worth noting, however, that there are large audiences for television outside this "peak time." Figures 4.8 and 4.9 show the extent to which audiences for television vary during the 24-hour broadcast day used by Nielsen Media Research.

These figures show that large numbers of Canadians watch television throughout the broadcast day. On almost any day there are at least 2 million English-speaking Canadians, and more than 500,000 French-speaking Canadians watching television between 10:00 a.m. and midnight. Thus, while it is true that overall viewing peaks notably between 7:00 p.m. and 11:00 p.m., it can also be seen that more than 50% of television viewing for both English and French television takes place outside prime time.

The amount of television that Canadians watch also varies by day of the week. According to CRTC data, Monday, Thursday and Sunday are the most popular days with viewing at its highest on Thursday. Viewing also varies with the season. It is higher during the fall and winter and lower during the spring and summer. Major holidays also have an impact on television viewing.

A further complication to a full understanding of what is watched and when it is watched is ongoing changes in definitions of Canadian content. This topic is considered in detail in Chapter 5. Additional details are also presented in Appendix 8.

Figure 4.8 Viewing curve of English-language television by program source, All persons 2+, Sept. 2000 to Aug. 2001

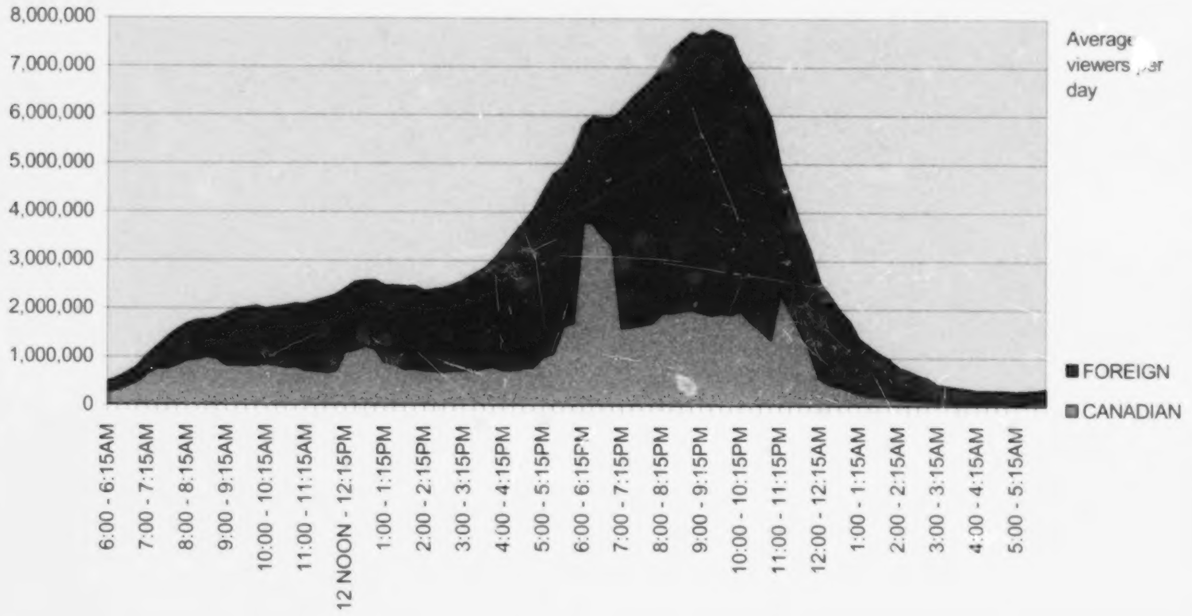
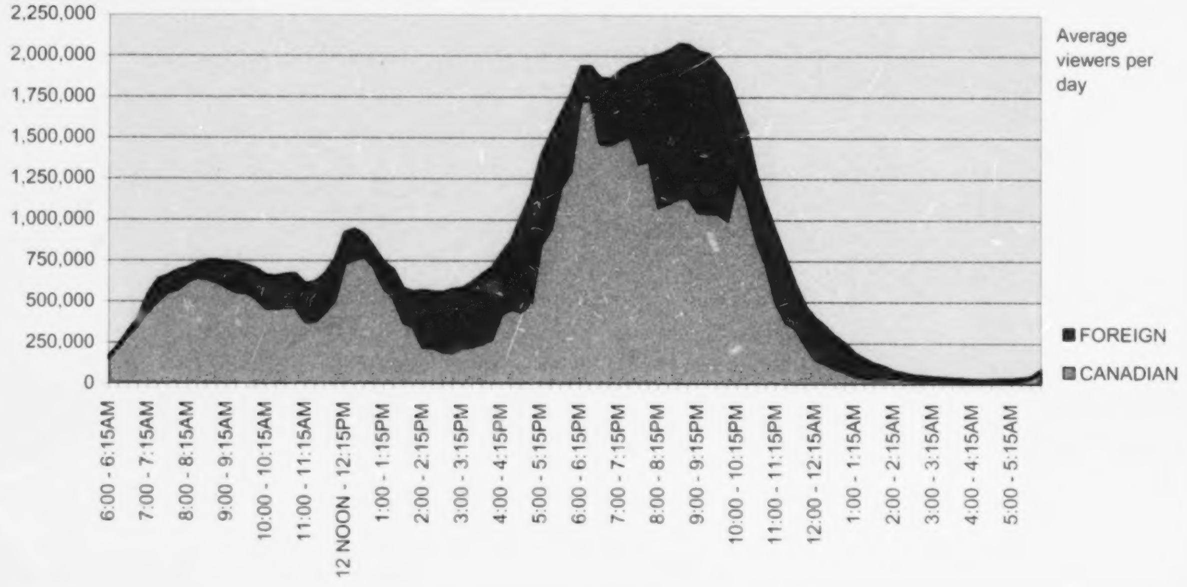


Figure 4.9 Viewing curve of French-language television by program source, All persons 2+, Sept. 2000 to Aug. 2001



Because a large number or people watch television during "prime time" television networks schedule what they hope will be popular shows during peak viewing hours. Some shows are more successful than others, thus there is a constant effort to adjust the program schedule to take account of what the other networks are doing. If a show is extremely popular and attracts large audiences, other networks are reluctant to pit their shows against a known winner.

There are several reasons for this. First, a show usually takes some time to build an audience so a new show will not be helped if it is scheduled against very strong competition. Second, a television series is expensive and little is gained if a potentially successful show is scheduled in an inappropriate time slot or against a program that is already very successful. Third, simultaneous substitution (which is described in Chapter 8), by virtue of the revenues it can generate for Canadian broadcasters, can also affect scheduling decisions.

Decisions about scheduling are not easy to make. Given the fierce competition, it is easy to see why English-language Canadian networks prefer to have a range of options (e.g., a movie of the week, a miniseries, or a series) in their efforts to deal with the competitive pressures they face.

Strategies for dealing with these pressures vary. A program that was scheduled on a Thursday night might be moved to another time slot because the competitive pressure is less or because the network has acquired rights to a foreign program that has to be broadcast at the same time. Frequent schedule changes make it difficult to build an audience for a show. These pressures are not the same for sports, news, public affairs, and children's programming. They are, however, a constant reality for English-language Canadian drama.

Measuring Audiences

Two techniques are used to determine audience size and what people are watching. One method is a diary that is filled out by a person who has agreed to participate in an ongoing study of television viewing habits. Another technique uses a meter that is attached to a television set, which keeps track of when the television is on, what program is being watched and who is watching.

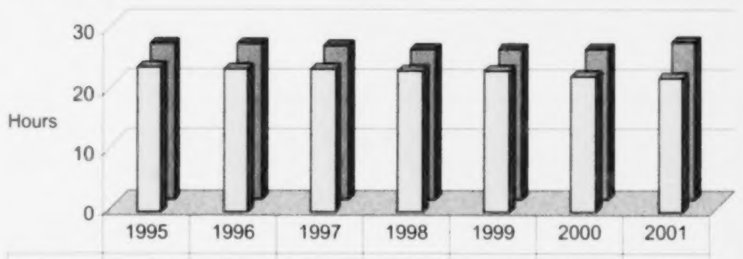
The diary system relies on the individual participating in the study to record when television viewing took place and what was watched. It is frequently filled in at the end of the evening, the next day or even at the end of the week. It is also based on a 20-hour broadcast day (6:00 a.m. to 2:00 a.m.). The diary system probably underreports television usage. In particular, it likely underreports the use of specialty services, which people will often turn to for a few minutes to check something of interest, such as the weather or the headlines. The statistics prepared from diaries indicate that people watch television between 22 and 24 hours per week.

The people meter has the advantage that it tracks every program that someone watches as soon as the television is turned on and covers a 24-hour broadcast day. It also records each time the channel is changed. Some analysts therefore consider it to be a more accurate measure of the way people watch television. Statistics based on the people meter suggest that Canadians, on average, watch between 24 and 26 hours of television per week.

This estimate is higher than the diary method for at least two reasons. First, the people meter captures television viewing that might be forgotten by a diary user trying to recall what was watched several hours or days after the fact. Second, the people meter probably overestimates the amount of television watched, given that some people turn the television on but are not necessarily watching.[11]

For these reasons, it is likely that the actual amount of television watched by Canadians is more than that measured by the diary method and less than that measured by the people meter. In Canada, the Bureau of Broadcast Measurement (BBM) uses the diary method and Nielsen Media Research uses the people meter. Figure 4.10 shows BBM and Nielsen's television tuning data for the period 1995-2001.

Figure 4.10 Average weekly viewing hours, All persons 2+, 1995-2001



	1995	1996	1997	1998	1999	2000	2001
☐ BBM	24	23.7	23.7	23.3	23.3	22.4	22.1
▨ Nielsen	25.7	25.8	25.5	24.9	25	24.8	26.1

Both systems involve representative samples of households that have agreed to participate in the measurement process. Statements about audience share require one to add all of the results from those who participate (either using the diary or the meter) to generate an estimate of what is going on in the country at large. There are, however, limits to what can be said about audience shares. Some groups of people, for example, francophones outside of Quebec and Northern and Aboriginal audiences, are generally not included as part of the survey population for studies of television or radio usage. This means very little can be said, or is known, about these groups' viewing and listening habits. A second problem has to do with the sheer number of channels that people can watch and the year-long period that they can be watching.

These problems are handled in a number of ways. Researchers at CBC English television, for example, use a six-week sample (42 days: 6 Mondays, 6 Tuesdays and so on) to develop an overview of the broadcast year. Radio-Canada uses BBM data, and the CRTC uses a combination of both systems. Other researchers (e.g., Statistics Canada) use a summary of diary results for the fall viewing season to draw conclusions about the broadcast year.

All of these techniques have their strengths and weaknesses. Needless to say, they are used by different organizations for different purposes and the results cannot be easily compared. "Sweeps week," for example, is a period when American television networks are trying to obtain the highest audience shares possible by scheduling either their best shows or a series of specials to attract large audiences. The networks do this to convince advertisers that the network has a large audience of the type of people that advertisers are trying to reach. Since advertising rates are higher for larger audiences, sweeps week is an important element in the marketing strategy of a television network, but a problem for a Canadian broadcaster trying to maximize audiences to Canadian programming. This is why Canada's English-language broadcasters tend to avoid scheduling new Canadian programs during periods that coincide with sweeps week. Thus, while sweeps week is understandable from an economic standpoint, it is important to remember that it is not representative of the overall performance of Canadian programming on Canada's English-language networks.

Taken as a whole, it can be seen why these various considerations created problems for the Committee in its efforts to assess the state of the Canadian broadcasting system. Indeed, every group that appeared before the Committee used the available statistics to support a particular argument. This means that great effort was required to appraise the validity of claims made by witnesses.

It is worth noting, however, that technological advances should significantly improve existing measurement systems. BBM, for example, has recently introduced the "portable people meter," a pager-sized device that is carried by a representative panel of television viewers. This device, "automatically detects inaudible codes that broadcasters embed in the audio portion of their programming."[14] This type of metering system is being introduced in television markets across Canada and will eventually replace existing measurement systems. Since this device is portable and demands less attention than the diary system, it is expected that it will provide more accurate measurements of people's use of all types of electronic media including radio and television, no matter where they might be.

In summary, depending on the measurement technique, it is estimated that Canadians watch somewhere between 22 and 26 hours of television per week, an average that has remained relatively constant over the past 35 years.[15] Since almost all Canadian households have a television, the potential audience for television at any point during a 24-hour period is approximately 31 million people divided into about 12.3 million households.[16] At the peak viewing time, however (i.e., between 7:00 and 11:00 p.m.), about eight million households have the television turned on (i.e., about 65%), and around two million households are watching Canadian programming (i.e., about 15%).[17]

The next few sections describe the types of programming available, and the audience share for these different types of programs. It then provides detail on changes in audience shares for French and English-language Canadian drama.

Available Services

In recent years, there has been a substantial increase in the number of services available. In the mid-1950s few Canadian households had access to more than three or four channels. This number increased steadily during the 1960s and 1970s and has skyrocketed since the mid-1980s, to such an extent that upwards of 375 channels are now available from some Canadian distributors.

This is a very significant change. As Mr. Michael Helm, Director General, Telecommunications Policy Branch, Industry Canada, explained to the Committee:

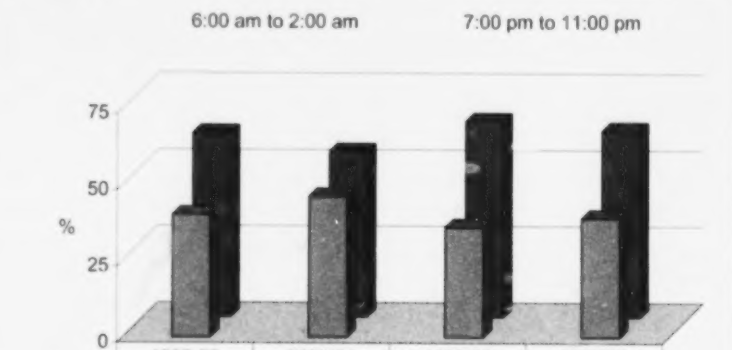
> I used to work in broadcasting within government. [Channel availability and choice] was an ongoing concern. Frequently, from remote areas all over the country we received complaints and concerns. People who lived in Toronto and Ottawa and Montreal and Vancouver had such a richness of broadcasting, of television channels available, why couldn't government do a better job of seeing that people in remote areas had as well? This went on for years — I'm sure you can remember — and it was a very real concern.
>
> I haven't heard a concern or a complaint like that in four or five years — none, zero — because satellite technology, essentially, solved the problem. You can now live on the remotest farm in the remotest part of the country and get a range of television and radio services at about the same price — a comparable price — to someone in the downtown area of the biggest city.[18]

The fact that these services are generally available, however, does not mean that all households — whether rural or urban — can equally afford the same level of service.

As the availability of television services has increased over the last 10 years so too has the overall number of hours of Canadian content available to watch. Furthermore, the availability of Canadian programming versus foreign options has over the past decade narrowed somewhat for English television and remained stable for French television. figures 4.11 and 4.12 present these data for 1992-93 and 2000-01.

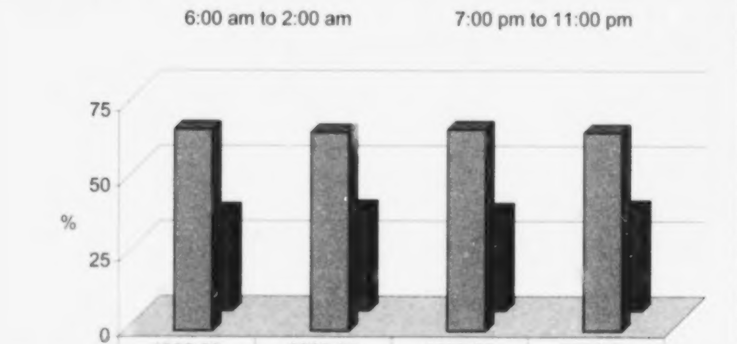
These data reveal that between 1992-93 and 2000-01, the all day supply of Canadian programming increased to nearly half (46%) of available English-language programs and remained stable at about two-thirds (67%) of available French-language programming.

Figure 4.11 Ratio of available Canadian and foreign programs, English television, 1992-93 / 2000-01



	1992-93	2000-01	1992-93	2000-01
▨ Canadian	40	46	36	39
■ Foreign	60	54	64	61

Figure 4.12 Ratio of available Canadian and foreign programs, French television, 1992-93 / 2000-01



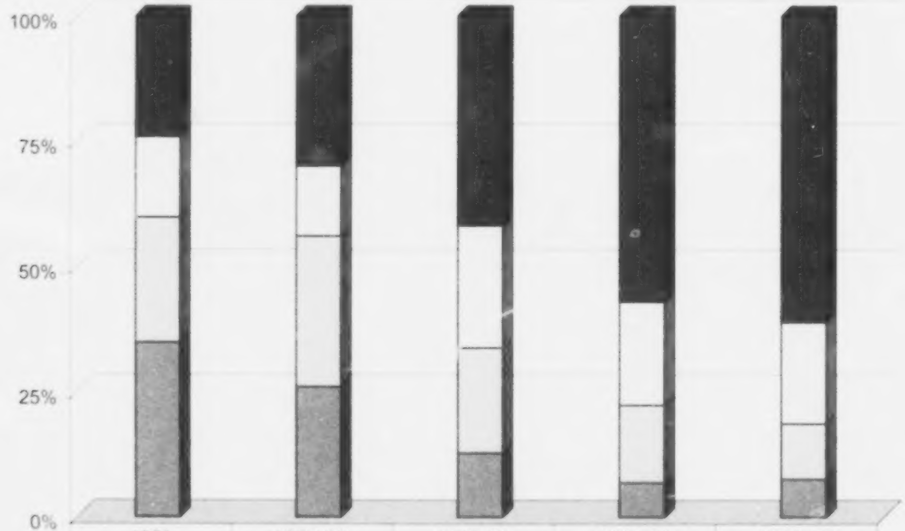
	1992-93	2000-01	1992-93	2000-01
▨ Canadian	67	66	66	66
■ Foreign	33	34	34	34

Viewing Share

In the early years of television, audience shares that exceeded 40 or 50% were commonplace. Figures 4.13 and 4.14 show the extent to which audience share has fragmented over the past 30 years. In 1969, for example, the CBC (including affiliates, when carrying CBC programming) enjoyed a 35% audience share, while CTV was garnering 25%. That same year, Radio-Canada was averaging 40% of all French viewers and TVA was enjoying a share of nearly 50%. In 2001-02, the CBC was down to just 7.6% of the English-speaking viewing audience and CTV was down to 11%. Similarly, Radio-Canada was down to 17.6% and TVA was being viewed by about one-third of the French-speaking audience.

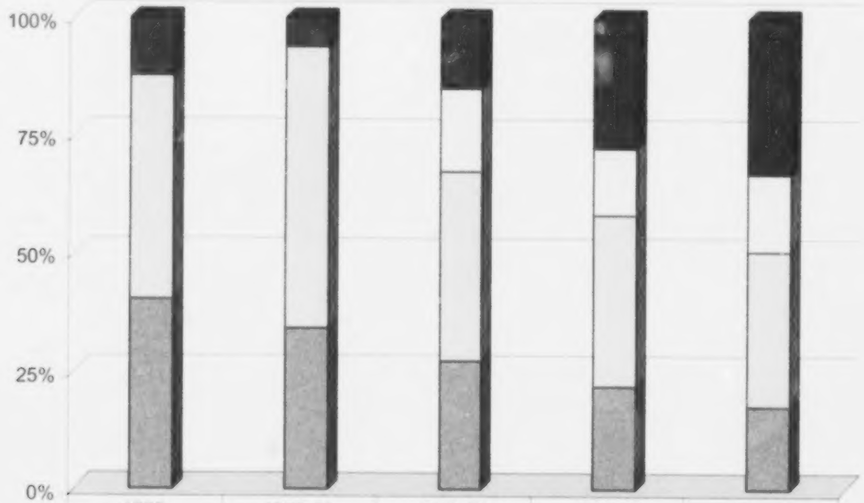
By contrast, the overall audience share for pay and specialty services has enjoyed dramatic increases in recent times. For example, between 1989-90 and 2001-02, the audience share for English-language pay and specialty services increased from 12.6% to 46.9%, while in the French-language market it increased from 9.4% to 29.2%.

Figure 4.13 Audience share of English-language television stations, All persons 2+, All day, Selected years 1969 through 2001-02



	1969	1979-80	1989-90	1999-00	2001-02
■ US Conventional	24.2	30	29.3	18.3	14.2
■ Pay and Specialty	0	0	12.6	39.7	46.9
☐ Other Canadian Non-Pay	16.1	14	24.4	20.9	20.3
☐ CTV	25	30	20.9	15.7	11
▨ CBC (including affiliates)	34.9	26	12.8	7	7.6

Figure 4.14 Audience share of French-language television stations, All persons 2+, All day, Selected years 1969-2002

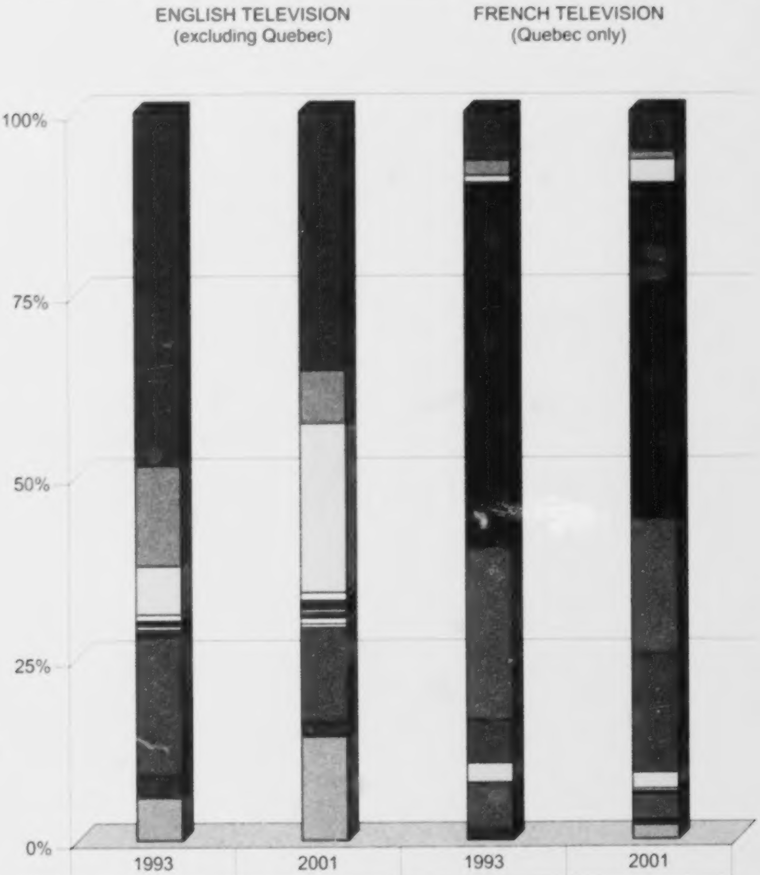


	1969	1979-80	1989-90	1999-00	2001-02
■ Other	12.1	6.3	5.7	3.9	3.8
■ Pay and Specialty	0	0	9.4	23.8	29.2
☐ TQS	0	0	17.3	14.1	16.5
☐ TVA	47.7	59.6	40.1	36.2	32.9
▨ Radio-Canada	40.2	34.1	27.4	22	17.6

Figure 4.15 shows audience share broken down in greater detail for fall 1993 and fall 2001. This figure reveals that Canadian-owned services dominate the Canadian television market, with about a 66% audience share in Canada (excluding Quebec), and a 90% share in Quebec.

Another interesting way to look at audience share is to break it down by ownership group. As several witnesses told the Committee, broadcasting in Canada in recent years has been characterized by an effort by conventional broadcasters to reassemble the fragments; that is, to regain lost audience share by acquiring pay and specialty channels. In doing so, even if viewers are not all watching the same programs, they are at least watching channels operated by the same ownership group.

Figure 4.15 Audiences shares of Canadian and foreign television services, 1993 / 2001

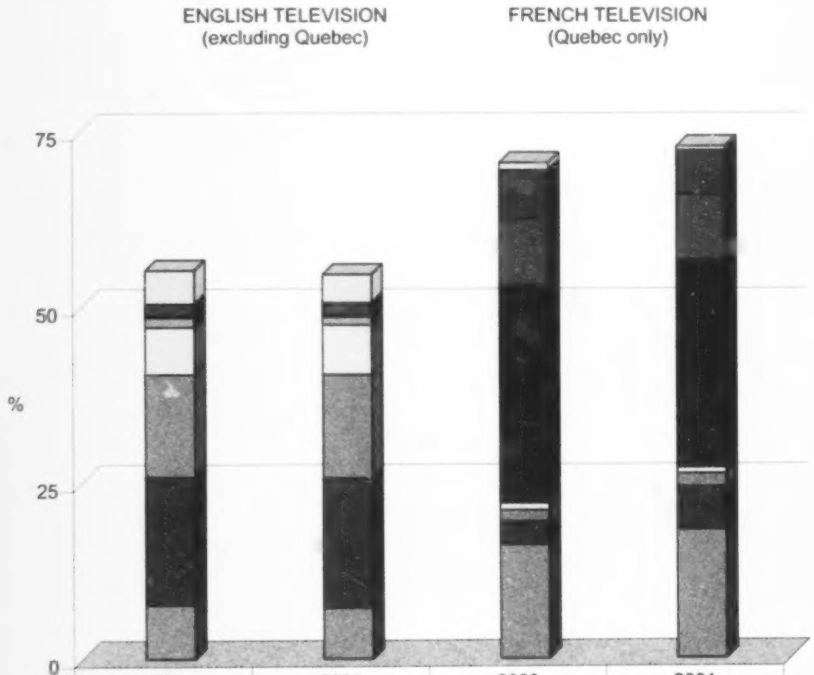


E = English services
F = French services
O = Other language services
US = American services

	1993	2001	1993	2001
■ E - Private Conventional	45.3	33.3	6.4	5.3
▨ E - CBC	12.9	6.9	2.1	1.1
☐ E - Pay and Specialty	6.2	21.8	0.9	3.1
☐ E - TVO	0.8	1	0	0
■ E - Other	0.6	1.1	0.3	0.4
☐ F - Private Conventional	0.6	0.5	47.6	44
■ F - Radio Canada	0.6	0.5	22.8	17.8
■ F - Pay and Specialty	0.1	0.2	5.6	15.7
☐ F - Télé-Québec	0	0	2.6	2.2
☐ O - Private Conventional	0	0.7	0	0.3
☐ O - Pay and Specialty	0.1	0.5	0	0.2
■ US - Conventional	17.8	12.2	6.2	3.7
■ US - PBS	2.8	1.8	1.1	0.5
▨ US - Pay and Specialty	5.5	13.4	0.2	1.9

For the CBC this particular turn of events has been particularly trying. While many private ownership groups have in recent years been granted new pay and specialty service licences, the CRTC has consistently denied new licence requests to the CBC, with the exception of two news channels (Newsworld and RDI), and some recently licenced digital services (Country Canada, The Documentary Channel and ARTV). A recommendation that addresses future CBC licence requests is made in Chapter 19.

Figure 4.16 Viewing shares of television services by major ownership groups, 2000 / 2001

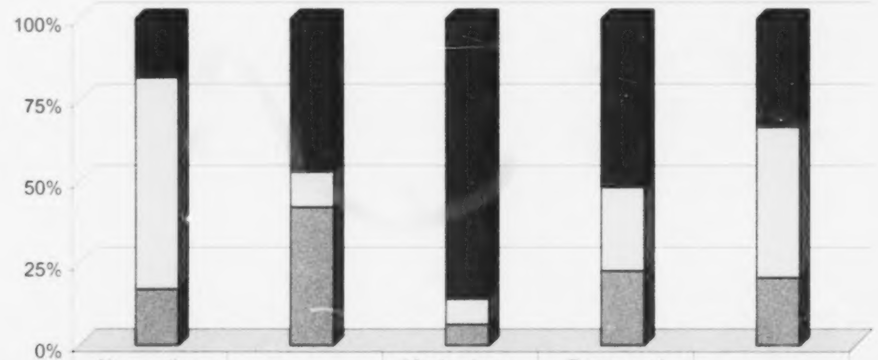


	2000	2001	2000	2001
□ Corus Entertainment Inc.	4.8	4	1.1	0.6
■ Astral Media Inc.	1.7	1.9	6.9	6.3
■ TQS Inc.	0.1	0.1	9.5	9.3
■ Quebecor Media Inc.	0.1	0	31	29.6
▨ Craig Broadcasting	1.4	1.2	0	0
□ CHUM Limited	6.7	7	1	0.8
▨ Global Television Network Inc.	14.6	14.8	1.6	1.9
■ CTV / Bell Globemedia Inc.	18.2	18.4	3.3	6.1
▨ CBC / SRC	7.7	7.3	16.2	18.3

Figure 4.16 shows the most recent combined viewing share data for Canada's major ownership groups. As can be seen, in fall 2000 and fall 2001, CTV/Bell Globemedia, Global TV and CHUM Ltd. enjoyed 18%, 15% and 7% combined viewing shares, respectively (excluding Quebec). Meanwhile, the CBC had a 7.3% audience share in fall 2001. In the province of Quebec, by far the most dominant ownership group in 2001 was Quebecor with an audience share of about 30%, while Radio-Canada was second at 18.3%.

Yet another way to understand viewing habits is to look at the types of programs Canadians watch. Figure 4.17 gives some sense of what Canadian programming English-speaking Canadians watch in an average week.

Figure 4.17 Distribution of viewing to English-language Canadian programming by program type and broadcaster, 2001

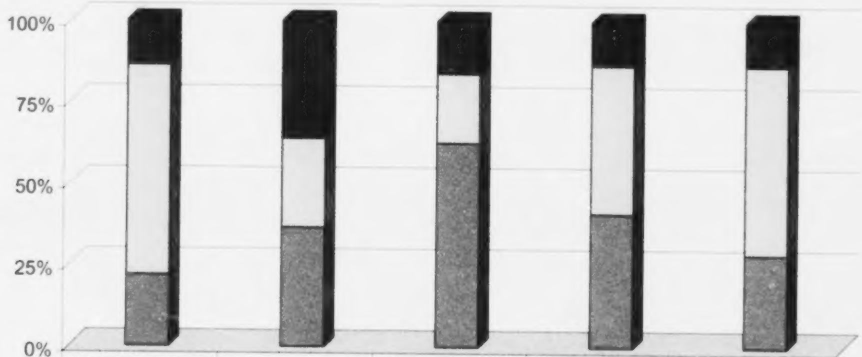


	News, other information	Sports	Music, dance variety	Drama and comedy	Overall
■ Pay and Specialty	18	46.9	85.8	51.7	33.2
□ Private Conventional	64.8	10.8	7.8	25.6	46.1
▨ CBC	17.2	42.2	6.4	22.8	20.7

As can be seen, in 2001, Canada's English-language private broadcasters (between 6:00 a.m. and 2:00 a.m.) attracted nearly 65% of all viewing of Canadian news programming and about 26% of all viewing of Canadian drama and comedy programming. In contrast, during this same period, the CBC attracted 42.2% of all viewing of Canadian sports, whereas the private conventional broadcasters garnered just 10.8% of the viewing audience. Overall, 46.1% of all viewing of Canadian programming was to private conventional networks, about one-third was to pay and specialty services, while 20.7% was to the CBC in 2001.

Figure 4.18 shows the same viewing data for French television in 2001. These data reveal slightly different viewing preferences for French-language audiences to Canadian-made programming.

Figure 4.18 Distribution of viewing to French-language Canadian programming by program type and broadcaster, 2001



	News, other information	Sports	Music, dance variety	Drama and comedy	Overall
■ Pay and Specialty	13.7	35.5	16.1	13.4	13.4
☐ Private Conventional	64.4	26.9	21.4	45.6	58.1
▨ Radio Canada	21.8	35.8	62.5	41	28.6

Overall, 28.6% of all viewing of French-language Canadian programming in 2001 was to Radio-Canada, 58.1% was to the private conventional networks, and just 13.4% was to pay and specialty services (between 6:00 a.m. and 2:00 a.m.). With respect to drama and comedy, Radio-Canada performed well, generating 41% of all viewing, while the private networks attracted 45.6% of all viewing of this genre. As for sports, the divide was far less than that seen for English-language broadcasters. Radio-Canada was still the most popular sports broadcaster in Canada, attracting 35.8% of all Frenchlanguage viewing of sports shows. Meanwhile, 64.4% of all viewing of Canadian news was to the private conventional broadcasters and 21.8% was to Radio-Canada.

What is being watched?

While the bulk of what people watch consists of news, sports and drama, it is important to note that viewing habits vary considerably. Some people may watch only sports and news, while others are interested in gardening and the weather. The Committee was told on several occasions that most

English Television's Comedic Canadians

Perhaps the most unusual "policy intervention" in the history of Canadian television came in 1981 when CBC management directed the cast of *SCTV* to provide more "Canadian content" on the show.

The show was written, produced and performed by Canadians, so this new request was greeted with outrage. "What do you want us to do?" asked Rick Moranis and Dave Thomas, "Throw up a map of Canada and sit there wearing toques and parkas?" The answer was, well, sure, why not?

people watch 6 or 7 channels despite having dozens, if not more than 300, from which to choose. The problem for today's broadcaster, however, is that very few people select the same six or seven channels.

What is watched changes over time. Comedy shows such as *Wayne and Schuster* in the 1950s, 1960s and 1970s were very popular, and inspired subsequent efforts such as *Second City Television*, *The Royal Canadian Air Farce*, *The Kids in the Hall* and *This Hour has 22 Minutes*.

Successful dramas have included *The Beachcombers* and a string of programs that derive their story line from Lucy Maud Montgomery's *Anne of Green Gables*. Recent successful programs have included *Random Passage*, *Trudeau*, and the CBC's Canadian history series, which was a success in both languages. Figure 4.19 shows the top 40 television series and specials broadcast on Canada's three English-language conventional networks, CBC, CTV and Global, between 1 October 2001 and 14 April 2002.

As can be seen, Canadians (outside Quebec) watch a great deal of American programming. They also watch a great deal of Canadian sports. Indeed, *Hockey Night in Canada*, which is one of only two Canadian series listed in figure 4.19, has been a perennial favourite since the earliest days of Canadian radio and television (see inset).

Overall, just 16 of the top 40 series and specials in 2001-02 were Canadian, and only 1 of these 16 shows was a regularly scheduled series. Seen another way, 12 of the 14 television series (86%) were American, whereas 15 of the top 26 specials (58%) were Canadian. These data highlight two challenges Canada's English-language broadcasters face: the popularity of American programming and the high cost of making programs that can be broadcast regularly (i.e., 22-26 episodes) over an entire television season. Indeed, the imbalance between the number of popular English Canadian television series and specials to a large extent reflects the fact that it is expensive to produce an entire series as opposed to one or two shows, such as a miniseries or a special event. Subsequent chapters in this report will have more to say about these points.

By contrast, French-language television shows over the years have included: *Pays et merveilles* (1953-61), *Point de Mire* (1957-59), two popular information shows of the 1950s, and a host of game shows, miniseries and the ever popular *téléromans*. These include: *La famille Plouffe*, *Lance et compte*, *Les Filles de Caleb*, *La Petite Vie*, and *Virginie*. The long line of success with French-language programming in Canada is quite remarkable.

So originated Canadian Corner and the immensely popular characters of Bob and Doug MacKenzie, who not only became international stars, but who may have done more to help English Canadians recognize themselves and their foibles than any serious TV drama of the day. While "hoser tips", such as how to get a mouse in a beer bottle, may not have been for everybody, there was a quirky recognition factor in the characters and weekly "topics" on the *Great White North*.

SCTV was only one of many great shows in the history of Canadian comedy. *Wayne and Shuster* were the pioneers, with sketches that ranged from buffoonery to the "egghead" parodies combining Shakespeare and popular TV genres. "Gimme a martinus!" orders the detective in their Julius Caesar parody. "Don't you mean a martini?" says the bartender — "When I want two, I'll ask for them."

The Newfoundland-based sequence of programs originating with *CODCO* and extending through *This Hour Has 22 Minutes* to *Made in Canada* mine the rich vein of politics as the source material for satire. Canadians cheer Mary Walsh's character Marg Delahunty, in her warrior princess costume, as she ambushes real politicians in their Ottawa offices.

Equally, they cheer the "Chicken Cannon" as it explodes in the faces of their favourite targets on the *Royal Canadian Air Farce*. But their delight in seeing famous figures skewered is matched by their delight in seeing themselves, as the characters in the Air Farce donut shop solemnly punctuate their observations with, "You got that right. You betcha. Tell me about it! Oh yeah, oh yeah, oh yeah."

Canadian comedy has been one of our most successful export genres as well. *Wayne and Shuster* appeared a record 67 times on *Ed Sullivan*. *SCTV* was still widely syndicated, as was *Kids in the Hall*. *The Red Green Show*, with Steve Smith, has been on CHCH, Global, CBC, and is also a cult hit on PBS stations. Equally often, our best talents have gone on to find a worldwide audience: Jim Carrey, Leslie Nielsen, John Candy, Martin Short, Rick Moranis, Dave Thomas, Eugene Levy, Catherine O'Hara, Dan Ackroyd, producer Lorne Michaels of *Saturday Night Live*, Dave Foley, Phil Hartman, Michael J. Fox, Mike Myers and many more.

Beyond any doubt, satirical sketch comedy has been the most successful of all non-news genres in the history of English Canadian television. And it is not simply a popular success — it's a cultural success as well. In laughing at ourselves, we have seen more clearly who we are.

Figure 4.19 Top series and specials on Canadian English conventional television networks, 1 Oct. 2001 to 14 Apr. 2002 (excluding Quebec)

Rank	Network	Program	Show type	Viewers, 2+ thousands
1	CTV	Academy Awards	Special	4,659
2	CBC	Olympics Closing Ceremony	Special	4,601
3	CTV	Academy Awards Pre-Show	Special	3,332
4	CBC	Olympics Opening Ceremony	Special	2,986
5	CTV	Golden Globe Awards	Special	2,393
6	CBC	Grey Cup Game 2001	Special	2,390
7	CBC	Olympics - Prime Time	Special	2,305
8	**CTV**	**E.R.**	**Series**	**2,046**
9	CTV	Star Wars: The Phantom Menace	Special	1,946
10	CBC	Trudeau	Special	1,879
11	CTV	Barbara Walters	Special	1,838
12	**CTV**	**C.S.I.**	**Series**	**1,818**
13	CBC	Celine Dion: A New Day Has Come	Special	1,635
14	CTV	Emmy Awards	Special	1,629
15	**CTV**	**Law & Order**	**Series**	**1,602**
16	**GLB**	**Survivor 4 Marquesas**	**Series**	**1,587**
17	**GLB**	**Survivor 3 Africa**	**Series**	**1,535**
18	CTV	Tagged: The Jonathan Wamback Story	Special	1,522
19	**CTV**	**Sopranos**	**Series**	**1,512**
20	GLB	Survivor 3 Africa Reunion	Special	1,485
21	CTV	American Music Awards	Special	1,469
22	GLB	Superbowl	Special	1,436
23	CBC	RCAF: Best of 2001	Special	1,387
24	CTV	Golden Globe Preshow	Special	1,385
25	**CTV**	**Law & Order: SVU**	**Series**	**1,384**
26	CTV	People's Choice Awards	Special	1,376
27	CTV	Juno Awards	Special	1,355
28	GLB	News Spec: Bush Press.	Special	1,346
29	CTV	Stolen Miracles	Special	1,329
30	CTV	Jamie and David	Special	1,296
31	**CTV**	**Weakest Link**	**Series**	**1,294**
32	CTV	Parkinson's Enigma	Special	1,280
33	**CTV**	**The West Wing**	**Series**	**1,261**
34	**CTV**	**Ally McBeal**	**Series**	**1,236**
35	CBC	Anne Murray	Special	1,206
36	**CBC**	**Random Passage**	**Series**	**1,198**
37	**CTV**	**The Amazing Race**	**Series**	**1,197**
38	CTV	Torso	Special	1,191
39	**CBC**	**Hockey Night in Canada**	**Series**	**1,161**
40	**CTV**	**Law & Order:CI**	**Series**	**1,154**

Moreover, as figure 4.20 shows, even in this era of increased audience fragmentation, Quebec's French-language viewers overwhelmingly prefer Canadian-made television shows.

This figure demonstrates the extraordinary extent to which Canadian specials and series dominate French-language television in Quebec. Apart from TVA's, *Spécial bloopers*, all of these shows are Canadian content. Furthermore, the audience numbers for many of these shows exceed the audiences enjoyed by most English-language Canadian programs listed in

Figure 4.20 Top series and specials on Canadian French conventional television networks, 1 Oct. 2001 to 14 Apr. 2002 (excluding Quebec)

Rank	Network	Program	Show type	Viewers, 2+ thousands
1	TVA	Les Olivier	Special	2,016
2	TVA	Le Gala Metrostar	Special	1,955
3	**TVA**	**Fortier**	**Series**	**1,928**
4	TVA	Spécial le retour	Special	1,838
5	**TVA**	**Le retour**	**Series**	**1,701**
6	TVA	Surprise sur prise	Special	1,689
7	TVA	Le meilleur du festival Juste pour rire	Special	1,686
8	TVA	Spécial KM/H	Special	1,667
9	SRC	JO Salt Lake : Finale Hockey	Special	1,597
10	TVA	Histoires de filles spécial	Special	1,528
11	**TVA**	**KM/H**	**Series**	**1,525**
12	**SRC**	**Music Hall**	**Series**	**1,521**
13	**TVA**	**Les poupées russes**	**Series**	**1,464**
14	**TVA**	**Tabou**	**Series**	**1,444**
15	TVA	Spécial Bloopers	Special	1,419
16	SRC	JO Salt Lake : Cérémonie de clôture	Special	1,396
17	**TVA**	**Histoires des filles**	**Series**	**1,394**
18	**TVA**	**Cauchemar d'amour**	**Series**	**1,393**
19	TVA	Célébration 2002	Special	1,307
20	TVA	Entrée des stars	Special	1,293
21	TVA	Le meilleur de la rentrée	Special	1,273
22	**TQS**	**Lance et compte III**	**Series**	**1,263**
23	SRC	Beaux Dimanche : Le gala de l'ADISQ	Special	1,217
24	SRC	JO Salt Lake: Gala des champions (rep)	Special	1,203
25	TVA	Humoriste…naturel	Special	1,167
26	**TVA**	**Tribu.com**	**Series**	**1,153**
27	TVA	Comicographe	Special	1,151
28	**TVA**	**Juste pour rire**	**Series**	**1,131**
29	SRC	La fureur : Jour de l'an	Special	1,125
30	**SRC**	**L'Or**	**Series**	**1,130**
31	**SRC**	**Un gars, une fille**	**Series**	**1,101**
32	TVA	Spécial Arcand	Special	1,093
33	TVA	Claire Lamarche Spécial	Special	1,051
34	TVA	Mannequin d'un jour	Special	1,049
35	**TVA**	**Emma**	**Series**	**1,040**
36	SRC	Ici…la rentrée	Special	1,010
37	**SRC**	**Le dernier chapitre**	**Series**	**1,005**
38	SRC	JO Salt Lake : Ouverture	Special	1,000
39	**SRC**	**La fureur**	**Series**	**991**
40	**TVA**	**Arcand**	**Series**	**989**

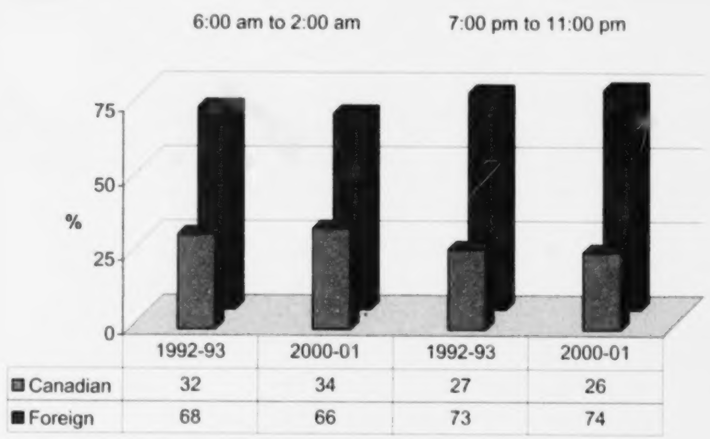
figure 4.19. This is particularly remarkable when one considers that the French-language market is just one-third the size of the English-language market.

These comparisons, however, do not readily show some of the significant increases in the viewing of English-language programming for certain types of Canadian programming. To understand these improvements, it is necessary to examine both the availability of programs and changes in what is watched. These issues are discussed below.

English and French Audiences

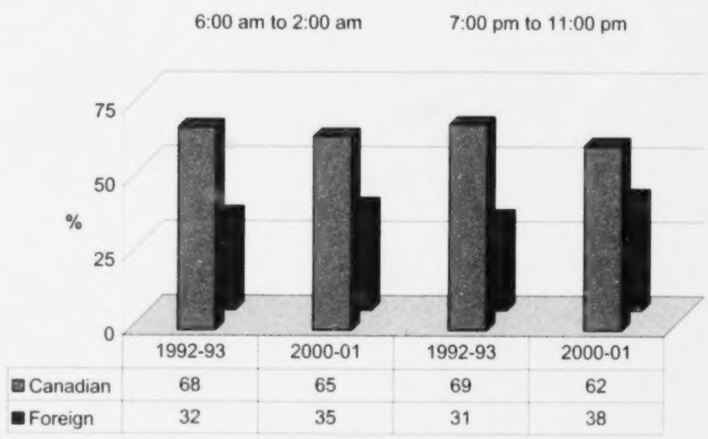
An important point to stress in any discussion of Canadian television viewing habits is the difference between English and French audiences. Factual information on these differences is presented in this chapter as well as in Chapter 5. Figures 4.21 and 4.22 show the viewing of Canadian and foreign programming, by English and French audiences, for 1992-93 and 2000-01.

Figure 4.21 Viewing of Canadian and foreign programs, English television (excluding Quebec)



	1992-93	2000-01	1992-93	2000-01
▨ Canadian	32	34	27	26
■ Foreign	68	66	73	74

Figure 4.22 Viewing of Canadian and foreign programs, French television (Quebec only)



	1992-93	2000-01	1992-93	2000-01
▨ Canadian	68	65	69	62
■ Foreign	32	35	31	38

The Greats of the Gondola

The popularity of professional hockey games in Canada has evolved alongside the development of broadcasting in our country. We can reasonably conclude that the broadcasting of these games on the radio and, later, television, helped boost the popularity of this sport, and this popularity has remained steady, despite the increased number of sporting events offered by national and international television broadcasters.

The stars of this game, in which speed, strength, imagination and teamwork make an unequalled sporting combination, have been and continue to be heroes that hockey fans latch onto with enthusiasm. The Richard, Orr, Howe, Harvey, Lafleur, Lemieux and Roy have given us long-lasting pleasure and joy.

Nevertheless, we should bear in mind that the exploits of hockey stars were described and conveyed to us by two remarkable commentators whose careers were intimately tied to the development of hockey as Canada's national sport. Their respective careers were closely linked to the evolution of broadcasts of hockey games in Canada: Foster Hewitt, beginning in the late 1920s, and René Lecavalier, beginning in the early 1950s.

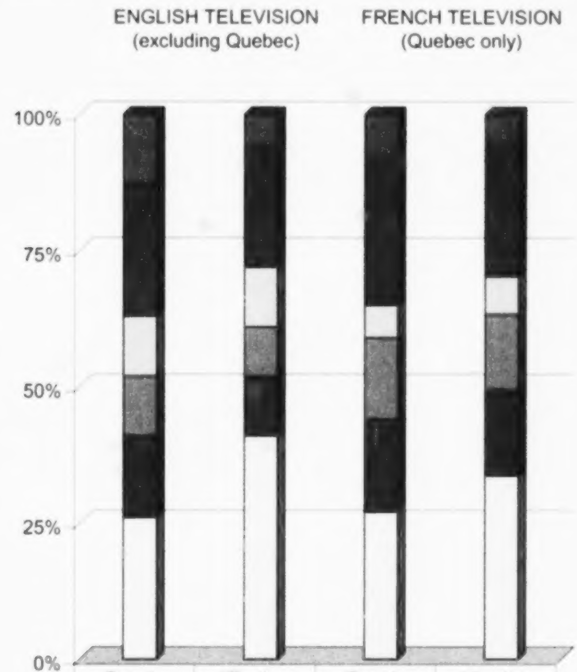
Foster Hewitt began broadcasting the games of the Toronto Maple Leaf on radio in 1927. Ken Dryden, one of the greats of the National Hockey League, in recalling his youth, described the impact this commentator made on him: "From his gondola nearly 20 metres above the ice at Maple Leaf Gardens, Hewitt became our national storyteller, growing in status beyond even those great players he talked about, outlasting them all. He helped to create a national habit."

In the early 1950s, in Montreal, one of Foster Hewitt's young colleague also began making his mark, with his marvelously articulate descriptions of professional hockey. René Lecavalier had a fiery passion for hockey, a sport he was intimately familiar with—like grammar, in fact. He was able to combine for television viewers a great love of the sport and a love of the French language. For more than 30 years, René Lecavalier made us rediscover a sport that, for him, held all the beauty, demands and subtleties of the language he used to describe it. Broadcasting launched René Lecavalier's career in a new direction in the world of sport, and we are the better for it. He kept his eye on the game courteously and without stumbling.

As can be seen, despite an increase in the supply of Canadian programming available (see figure 4.11), the all-day viewing of Canadian programs increased slightly for English-language audiences, from 32% to 34%, and decreased slightly, from 68% to 65%, for French-language audiences between 1992-93 and 2000-01.

These data, however, cannot tell us what Canadians prefer to watch. One way to tackle this issue is to compare program supply with what is actually watched. Figure 4.23 shows that drama is by far the most popular program type for English and French television viewers, generating 41% and 34% of all viewing, respectively. It also shows that Canadian audiences are more attracted to certain types of programming.

Figure 4.23 Overall viewing of Canadian and foreign television programming, 6:00 am to 2:00 am, 2000-01



	Supply	Viewing	Supply	Viewing
■ Other	13	6	8	5
■ Variety/Music/Quiz	24	22	27	25
□ Sports	11	11	6	7
▨ Public Affairs	11	9	15	14
■ News	15	11	17	16
□ Drama/Comedy	26	41	27	34

The giant of the small screen

Quebec television series are unique in the world of Canadian, if not international, television. In an installation prepared for the *Téléroman* exhibit at the Musée de la civilisation in Quebec City from 1996 to 1998, it was mentioned by way of introduction that, in 1974, UNESCO commissioned a Scandinavian sociologist, Tapio Varis, to prepare the first international survey of television programs. While doing this analysis, Varis realized that he had inventoried a significant number of hours of dramatic series in Quebec. This figure was so disproportionate in comparison with the rest of the world that he felt it necessary to specify that these figures were accurate and that there had been no error on his part. A better illustration of the situation is the fact that between 1953 and 1997, there were 168 major television series produced and broadcast in Quebec!

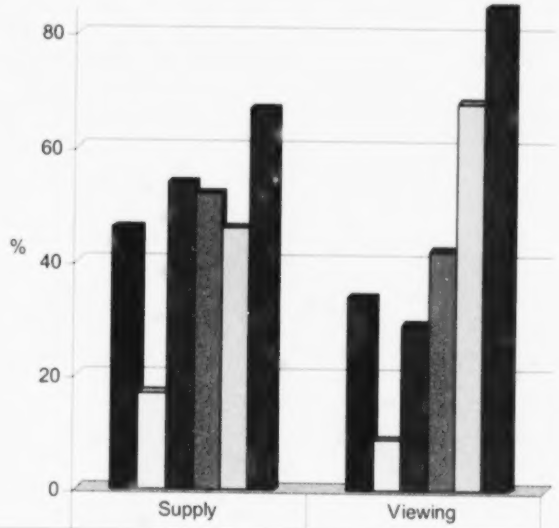
In addition to the sheer number of programs produced, there were audience ratings that broadcasters the world over can only dream of. The following ratings were recorded between 1962 and 1995:

- **2,686,000: *Les belles histoires des pays d'en haut* (1962)**
- **2,689,000: *Terre humaine* (1981)**
- **2,708,000: *Rue des pignons* (1975)**
- **2,709,000: *Moi et l'autre* (1971)**
- **2,717,000: *Au nom du père et du fils* (1993)**
- **2,765,000: *Entre chien et loup* (1989)**
- **3,008,000: *Scoop* (1994)**
- **3,021,000: *Le temps d'une paix* (1986)**
- **3,227,000: *Lance et compte* (1989)**
- **3,334,000: *Blanche* (1993)**
- **3,664,000: *Les filles de Caleb* (1991)**
- **4,098,000: *La petite vie* (1995)**

Obviously, underlying these ratings is a deep affection on the part of Quebec viewers for their own televised series. These ratings also reflect a dialogue, a very intimate communication between writers, actors and their viewers. There is a complicity that everyone identifies with. The popularity of television series in Quebec has remained unchanged for the past 50 years. Do television series reflect the heart and soul of Quebecers? Are they the cultural

Furthermore, figures 4.24 and 4.25 show that English Canadians watch proportionally more Canadian news and sports than what is available, and watch far less of what is already a modest supply of Canadian drama and comedy.

Figure 4.24 Overall viewing of English-language Canadian television programming, 6:00 am to 2:00 am, 2000-01 (excluding Quebec)



	Supply	Viewing
■ Overall	46	34
□ Drama/Comedy	17	9
■ Variety/Music/Quiz	54	29
▨ Public Affairs	52	42
□ Sports	46	68
■ News	67	85

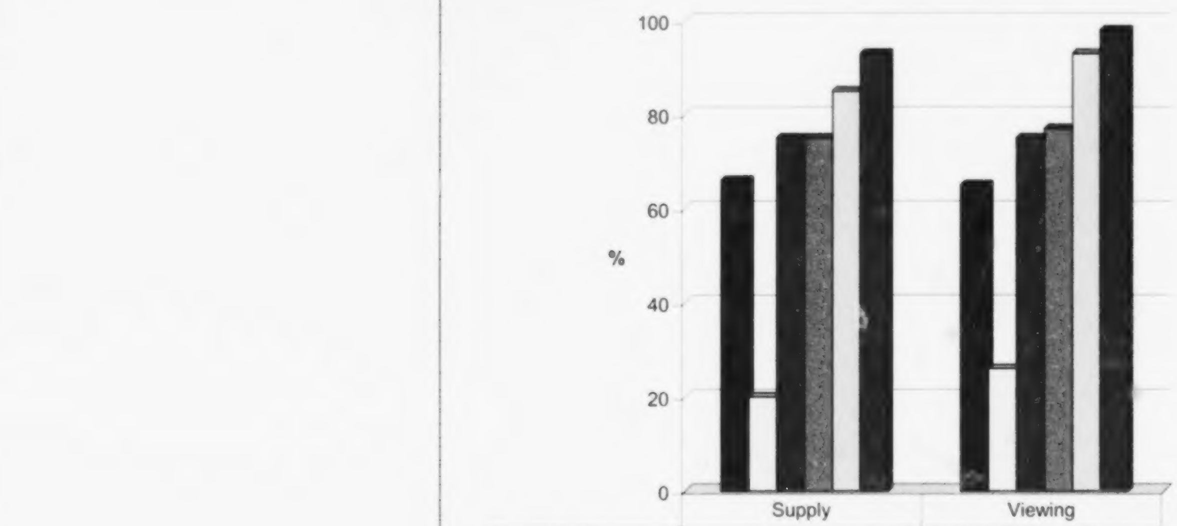
Three points concerning these data need to be made. First, only 34% of what anglophone Canadians watched in 2000-01 was Canadian content. Second, francophone Canadians watched a much higher proportion of Canadian content, almost 66%. Third, less than 10% of the drama watched by anglophones was Canadian, and surprisingly only 26% of the drama watched by francophones was Canadian.

expression of their past and present aspirations, rivalled only by the songs of singer-songwriters?

Gilles Pelletier, who played various characters in these popular series, said :

[*translation*] ...television viewers enjoyed and continue to enjoy seeing the same characters week after week, characters they have come to regard as members of their family. Whether they are living dramatic and dangerous situations, as in Lance et compte, or recounting their daily disappointments and good fortune, as in Sous un ciel variable, viewers remain faithful. Why? Therein lies the secret of series that are made in Quebec.

Figure 4.25 Overall viewing of French-language Canadian television programming, 6:00 am to 2:00 am, 2000-01 (Quebec only)

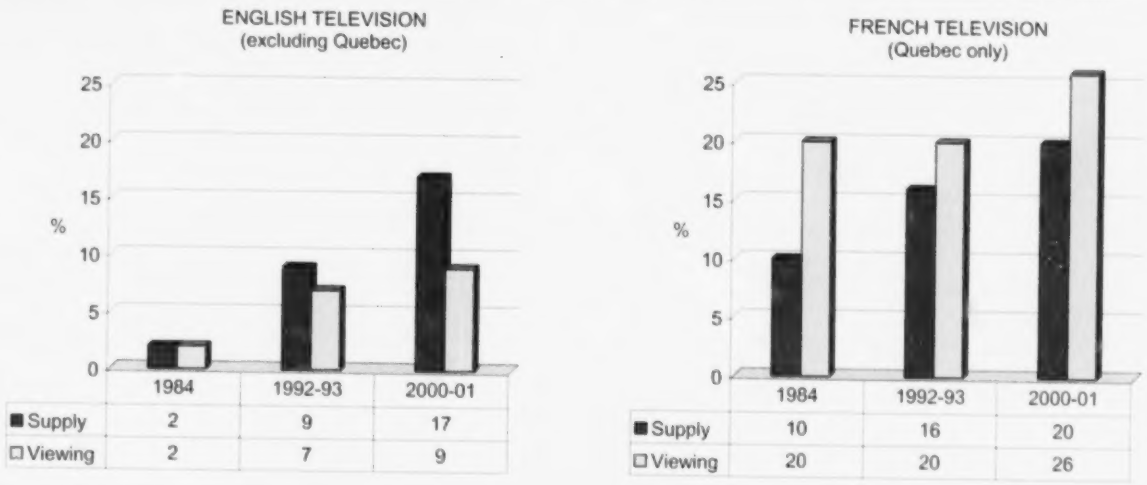


	Supply	Viewing
■ Overall	66	65
☐ Drama/Comedy	20	26
■ Variety/Music/Quiz	75	75
▨ Sports	75	77
☐ Public Affairs	85	93
■ News	93	98

Although the situation described above might seem discouraging it does not show an important increase that occurred between 1984 and 2001. In 1984, 2% of the drama watched by English-speaking Canadians was made in Canada; by 1999, this had increased to 9%.[19] This represents an improvement of more than 450%. Similarly the viewing of Canadian drama/comedy in the French-language market more than doubled from 10% to 26% during this same period.

One reason the viewing of English- and French-language drama/comedy has increased is because there is more programming available to watch. Due to improvements in program support measures (see Chapter 5), Canadian drama/comedy now represents 17% of the available English-language drama/comedy and 20% of all available French-language drama/comedy (see figure 4.24). In other words, the gap in the overall supply of English and French-language Canadian drama/comedy has narrowed significantly since 1984. The important difference, however, is

Figure 4.26 Supply and viewing of Canadian drama and comedy, all day, selected years 1984 through 2000-01



that French-language Canadian drama/comedy now attracts a 26% audience share, whereas English-language Canadian drama/comedy attracts a 9% audience share.

To sum up, Canadian English-language television programming, taken as a whole, has not been as successful as its French-language counterpart in attracting viewers, particularly to Canadian drama and comedy. That said, both language groups have solid audiences for Canadian news and sports programming.

The Committee recognizes, however, that it must be cautious in its approach to the question of Canadian programming. One reason is that the problem may not be a lack of programming, but a lack of viewers. A second reason is that the problem is almost entirely in the area of English-language drama and comedy. The same problem does not exist with sports, children's programming or the news. Indeed, the Committee was told repeatedly during its hearings and its site visits that the range and quality of our children's programming is a Canadian success story.

For example, Mr. Alex Park, Vice-President, Programming and Educational Services, Shaw Children's Programming Initiative, told the Committee:

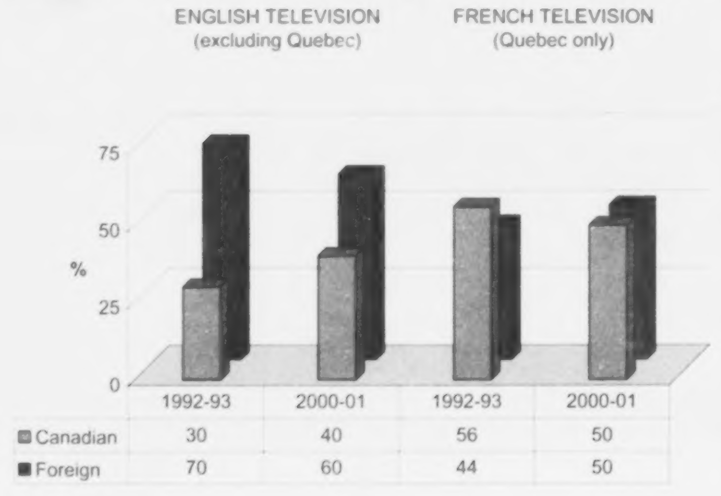
> *Incredible Story Studios*, was voted the best children's program at the recent Gemini Awards, and was a silver medal winner in the New York International Children's Festival. This program, this Canadian program, is viewed in over 125 million homes in over 30 countries around the world. It is recognized as the most successful children's series sold in the international marketplace — one hundred per cent Canadian stories created by our Canadian children.[20]

Making a more general point, Mr. Richard Stursberg (who was at the time the Chairman of the Board of the Canadian Television Fund) said:

> In many cases kids' programming, especially for very small children, is set in a non-specific environment that travels extremely well internationally. In fact, it's fair to say that Canadian kids' producers do very well internationally.[21]

General support for these points about children's programming can be seen in figure 4.27. In 1992-93 about 30% of English Canadian children's viewing time was to Canadian programming. By 2000-01 this had increased to 40%. As for French-language programming, it can be seen that there was a 6% drop between 1992-93 and 2000-01, from 56% to 50%.

Figure 4.27 Viewing of Canadian and foreign children's television programs by children aged 2-11, 6:00 am to 2:00 am, 1992-93 / 2000-01



The Degrassi Phenomenon

Television for children and youth has long been one of the prides of Canadian production. And within that excellent output, one of the most successful English-language productions ever has been the *Degrassi* series.

The *Degrassi* series is now in its seventh incarnation. It began in 1986 on CBC as *The Kids of Degrassi Street*, which became *Degrassi Junior High* in 1987, then *Degrassi High* in 1989, as the series followed the lives of its growing characters. When the Kids finally grew into adults, the series culminated with the movie of the week, *School's Out* and the non-fiction series on youth issues, *Degrassi Talks*. The show then returned in 2001 as *Degrassi: the Next Generation* on CTV, co-developed with the Internet site, www.degrassi.tv.

Degrassi.tv is more than an ordinary Web site. It's meant to look like the Web site of a real school — the one used by characters in the show. Users become "virtual students" at Degrassi Community School, with their own online home rooms, lockers and journals. They can compete in online games, message other users and the shows characters, and engage in discussion with kids from around the world. Moderators ensure that the Degrassi "rules" are adhered to, so that it's a safe online environment. Since the show itself raises real issues, the site is also set up to help kids find assistance for their more serious problems. Over 150,000 Canadians and another 30,000 Australians are currently registered users.

Perennially popular with young people in Canada and the more than 50 countries where it has been broadcast, the series has also won an impressive list of 38 awards for its actors and its originators, Linda Schuyler and Kit Hood, including 8 Gemini awards, 2 awards from the Prix Jeunesse, and 2 International Emmys.

The true accomplishment of the series is not measured by its awards, however, or even by such reviews as the *New York Times'* "a series that dispenses with tidy morality and goes for the gut". Its real service has been to the generations of young people for whom *Degrassi* has been a touchstone when dealing with the tremendous challenges they face.

Whether the series deals with high profile issues like drug and alcohol use, depression, the threat of AIDS, or just the day to day problems and joys of

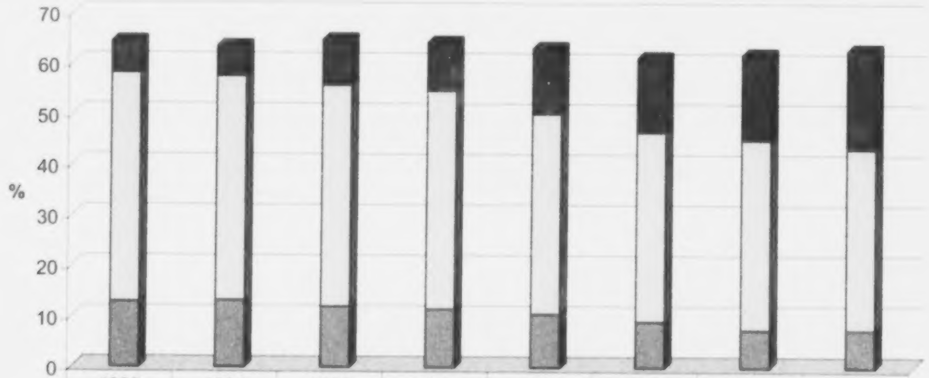
To sum up, it is worth noting that the most recent data for 2001-02 (see Chapter 5) show that there are thousands of new hours of Canadian programming being made available to watch each year. Excluding news and sports, more than 2,800 hours of original Canadian programming were created during the fiscal year 2001-02, an increase of nearly 400 hours from the previous year.[22] Moreover, if one includes news and sports, there were several thousand additional hours of Canadian programming. This means that it is now possible for Canadians to watch just Canadian programming. As will be seen in Chapter 5, however, there is an ongoing challenge to support the creation and production of original Canadian programming.

friendship, love and awakening sexuality, the issues dealt with on *Degrassi* have always been treated with realism and respect. In the words of creator/producer Linda Schuyler, "The goal of Degrassi is to say to young people who are going through that stage where they are part child, part adult, 'The kinds of feelings that you're experiencing, the changes that are happening in your body and your life, are happening to all sorts of kids, all over. You are not alone.'"

B. The Internet Revolution

Chapter 3 discussed various applications of nineteenth and twentieth century technologies that contributed to the emergence of today's broadcasting system. This section attempts to look forward to suggest the types of services that might be available to audiences. While no one knows the exact configuration of these services, glimmerings of the future can already be seen.

Figure 4.28 Viewing shares of English Canadian services, All persons 2+, 1993-2000 (excluding Quebec)

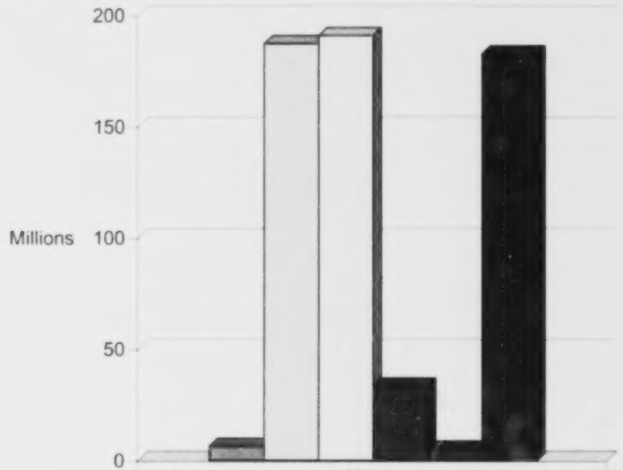


	1993	1994	1995	1996	1997	1998	1999	2000
■ Can/pay/spec/digital	6.2	5.9	9	9.6	13	14.7	16.9	19.5
□ CDN private conventional	45.3	44.4	43.8	43.2	39.6	37.5	37.0	35.9
▨ CBC	12.9	13.2	12	11.5	10.6	9.1	7.5	7.5

Changing habits

Figure 4.28 provides some perspective on how television viewing habits have changed in recent years. Using English television viewing data, this figure shows that there was a steady decline in the percentage of people who watched Canadian conventional television services between 1994 and 2001, and a concurrent increase in people watching Canadian specialty services. What this suggests is that viewing patterns are in transition and will likely continue to change as even more new media choices become available.

Figure 4.29 Estimated Internet users by world regions, September 2002



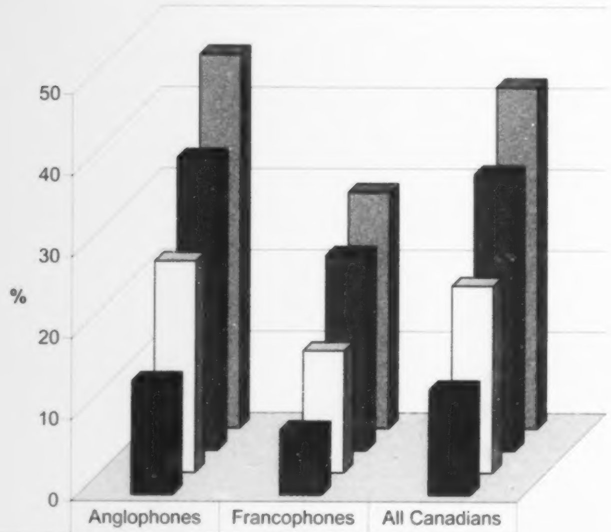
	Users
▨ Africa	6.31
☐ Asia Pacific	187.24
☐ Europe	190.91
■ Latin America	33.35
■ Middle East	5.12
■ North America	182.67

Totals
Canada: 16.84 million
Overall: 605.6 million

Perhaps of greater significance is the explosive growth in Internet use, not only in Canada, but worldwide over the past few years. Although estimating how many users are online is an inexact science, it is believed that more than 600 million people are now online. Figure 4.29 shows the distribution of these online users by major regions. It is worth noting that virtually no one was online in 1991 and that most of this growth has occurred since the mid-1990s.

Within the Canadian context, Figure 4.30 shows that households with an Internet service provider (ISP) increased rapidly between the summer of 1997 and the fall of 2002.

Figure 4.30 Canadians with an Internet service provider, Ages 18+, 1997-2002



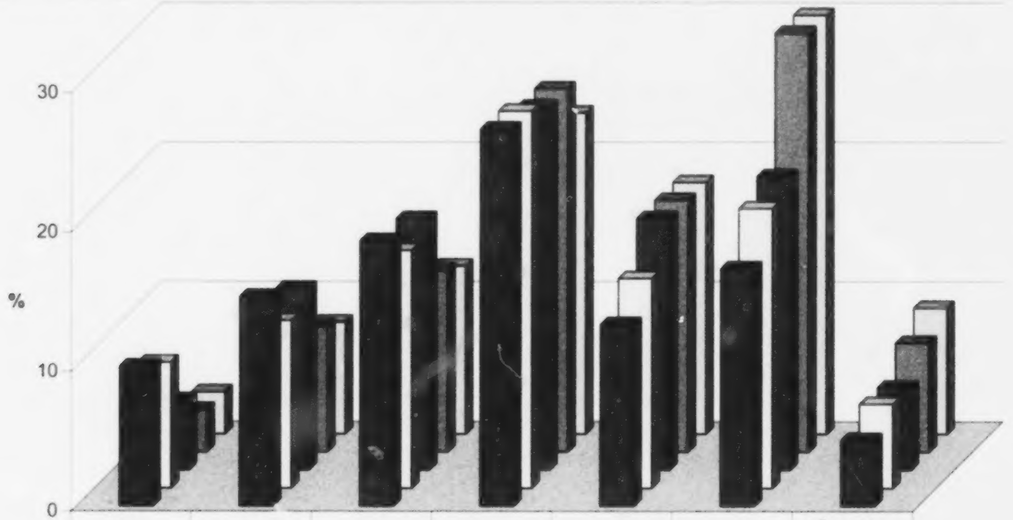
	Anglophones	Francophones	All Canadians
■ 1997	14	8	13
□ 1998	26	15	23
■ 1999	36	24	34
▨ 2000	46	29	42

All Canadians
2001: 48%
2002: 51%

Statistics Canada further estimates that 4.7 million Canadian households in 2000 were connected to the Internet, of which 3.7 million (78%) were linked by telephone and 1 million (22%) were connected by cable (i.e., had high speed access). Moreover, over half of all Canadian households had at least one occupant who was a regular Internet user in 2000, which was an increase of 42% from 1999.[24]

As for the amount of time spent online, figure 4.31 shows that between the summer of 1997 and the fall of 2000, Canadians increased their use of the Internet, from an average of 4.7 hours to 7.8 hours per week. Of particular interest is the fact that 35% of Canadians who use the Internet spent 10 hours or more per week online during the fall of 2001.

Figure 4.31 Hours spent online each week among Canadians age 18+, 1997-2001



	None	< 1 hour	1 to < 2	2 to < 5	5 to < 10	10 +	Average (hours)
■ Summer 1997	10	15	19	27	13	17	4.7
☐ Summer 1998	9	12	17	27	15	20	6
■ Fall 1999	5	13	18	26	18	21	5.9
▨ Fall 2000	3	9	13	26	18	30	7.8
☐ Fall 2001	3	8	12	23	18	35	9.0

Trends to consider

While it is difficult to know with any precision how Canadians will decide to balance their use of the Internet and broadcasting, some interesting trends are evident if we look at the habits of today's youth. This section presents survey results from a study conducted by the Environics Research Group of 1,081 Canadian youth ages 6-16 in March 2000.

Figure 4.32 shows the time spent by Canadian youth watching television and using the Internet. As can be seen, more than 70% of all Canadian youth aged 6-16 in March 2000 reported using the Internet at school, and more than 80% reported using the Internet at home. As for television viewing, about 30% reported watching more than three hours a day and nearly 50% reported watching between one to three hours a day. Overall, more than 95% of all Canadian youth reported watching at least some television each day.

Figure 4.32 Time spent by Canadian youth watching television and using the Internet, March 2000

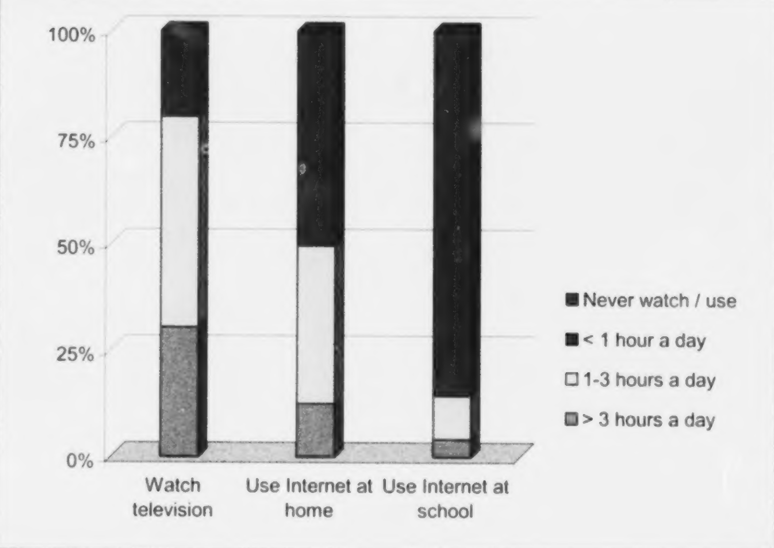


Figure 4.33 Canadian youths' frequency of Internet use by location, March 2000

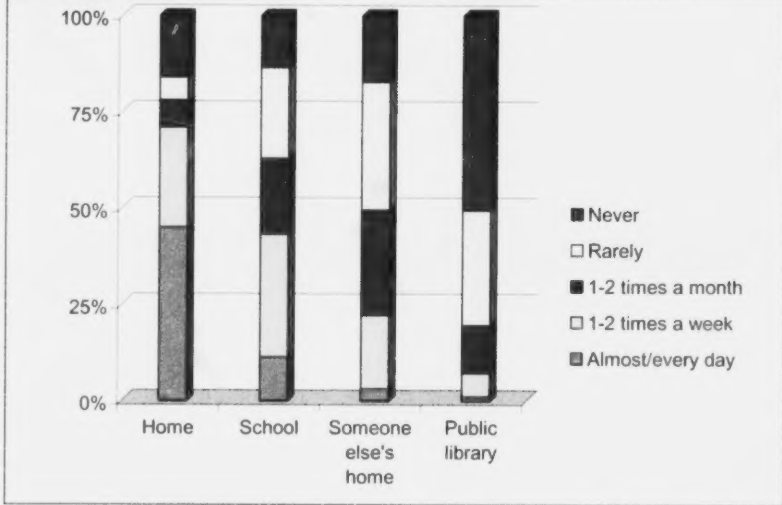


Figure 4.33 shows how often and where Canadian youth use the Internet. This figure reveals that more than 70% of all Canadian youth reported using the Internet at home at least once or twice a week in March 2000. Of those, a majority used it almost every day. It is interesting to note that the use at home is more frequent than the use at school; that being said, more than 40% of all respondents also reported using the Internet at school at least once or twice a week.

Figure 4.34 shows the most common types of online activities engaged in by Canadian youth. Not surprisingly, the major reported uses were: downloading music, e-mail, surfing and games. It is also worth pointing out that more than 35% of the respondents said that they used the Internet for homework.

Figure 4.34 Canadian youths' most frequent Internet activities, March 2000

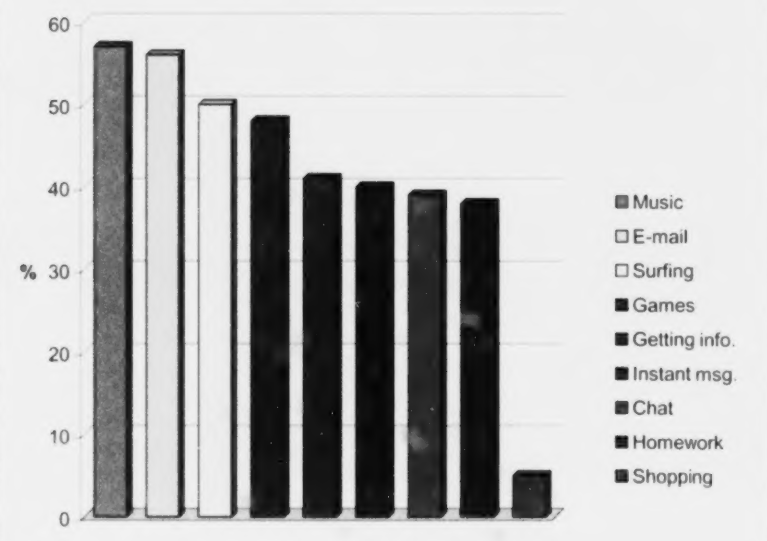


Figure 4.35 shows the types of information sought by Canadian youth when online. This figure shows that more than 35% of all Canadian youth reported seeking out Canadian information at least once a month. Moreover, more than 20% looked for health information at least once or twice a month.

Figure 4.35 Canadian youths' frequency of Internet use to find specific information, March 2000

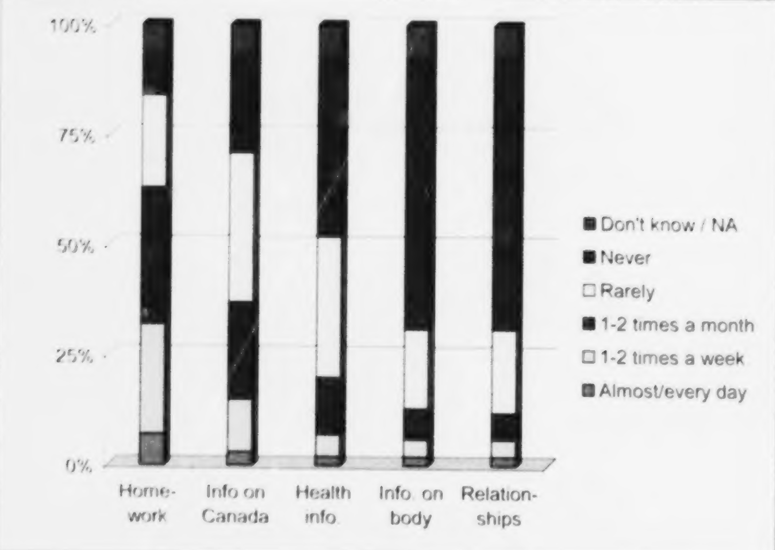


Figure 4.36 shows what Canada's youth reported doing outside of school in March 2000. As can be seen, more than 30% played electronic games, just under 40% played sports, more than 40% used the Internet, about 50% spent time with friends, more than 80% watch television and 85% listened to music. Clearly, Canadian youth engage in a number of activities each day.

Not surprisingly, therefore, a January 2001 Edison Media Research study of American youth found that nearly 50% of all respondents reported that they sometimes watch television while online (see figure 4.37). Furthermore, when asked to choose between giving up television or giving up the Internet, just under 50% of those between 12 and 24 indicated that they would rather give up television.[11]

The importance of these findings should not be underestimated. Not only do they show that a significant portion of today's youth view the Internet as a more important communications medium than television, but they suggest that concurrent television and Internet use will be seen as commonplace in the years to come.

Figure 4.36 Most frequent activities of Canadian youths outside school, March 2000

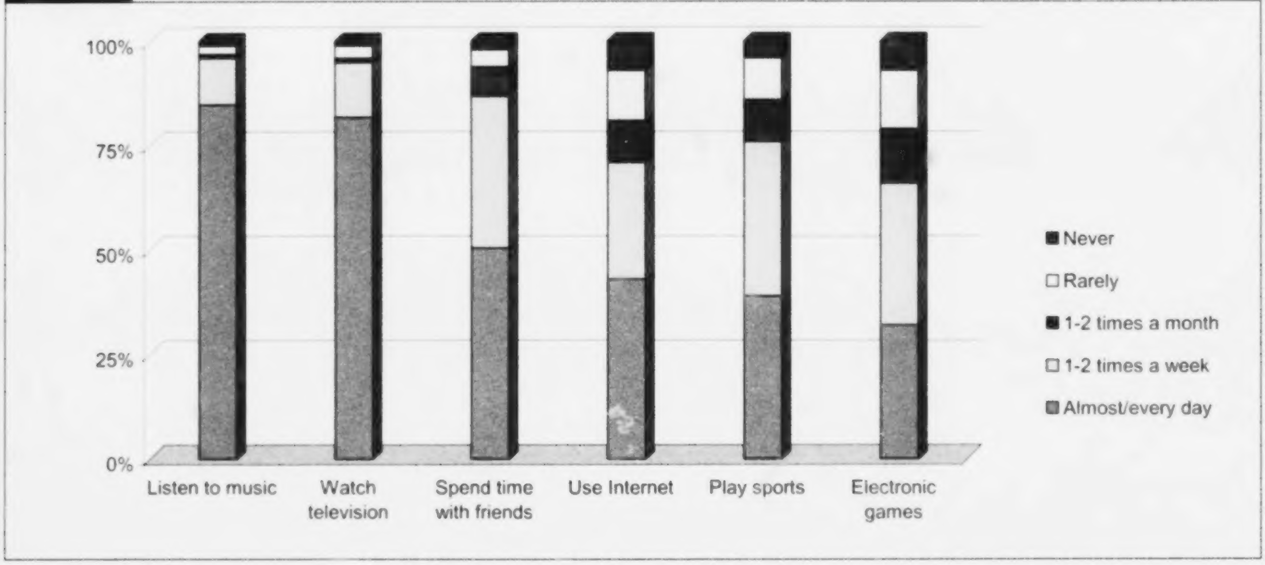
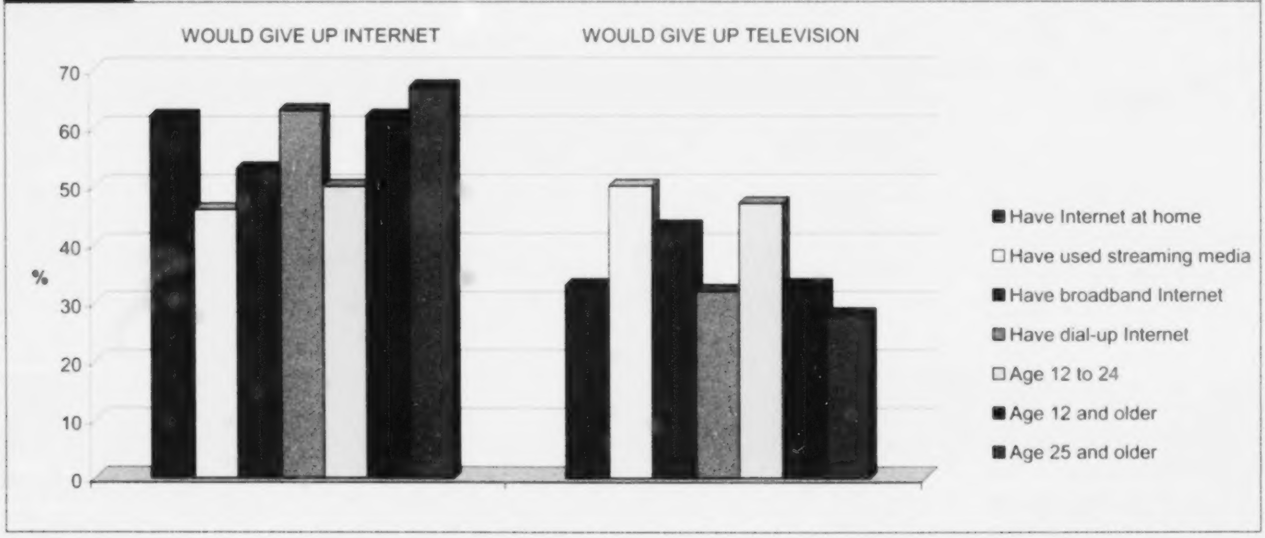


Figure 4.37 Active online users willing to give up Internet access or television (if forced to choose), January 2001

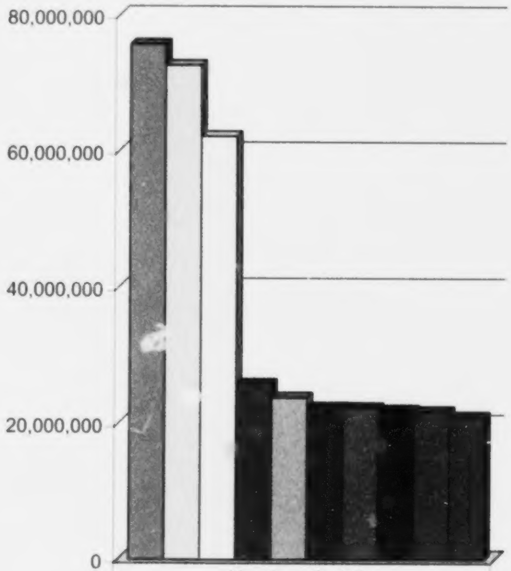


We also know that the demand for a technology that will interconnect all of the electronic equipment in the home is increasing.[25] For example, in a recent survey of those with broadband Internet access, more than half wanted to make content accessible from any screen or speaker in the home, and specifically listed "digital video and recording and playback on any TV or computer as a demand for home networking." Furthermore, one-third wanted the ability to listen to streaming audio, or to watch streaming Internet video on their terms, on devices of their choosing.[26]

What do we do online?

It is important to realize that the Internet is used for a number of different purposes. For example, in December 2002, approximately 350,000 terabytes of information (that is, about 1,000 terabytes per day) were transmitted via the Internet.[27] A terabyte is 1,000 gigabytes or a trillion bytes. Since it is difficult to conceive of a trillion bytes as "bytes" it is

Figure 4.38 Ten most visited websites by North Americans, October 2002



	Number of visits
■ AOL Time Warner	75,760,015
□ Microsoft	72,651,569
□ Yahoo!	62,206,274
■ Google	25,831,336
▨ Terra Lycos	23,836,419
■ RealNetworks	22,408,180
■ eBay	22,368,057
■ About-Primedia	22,018,131
■ US Government	21,802,796
■ Amazon	21,053,983

helpful to imagine a trillion bytes as being the equivalent of 300 years of a fairly thick daily newspaper (e.g., *La Presse*, *The Toronto Star*, the *New York Times*), or two terabytes as the size of an academic research library.

While it is hard to separate use of the Internet by individuals,[28] it is possible to look at the traffic on the Internet that does not involve "data".[29] One way to get a sense of how individuals use the Internet is to look at the top destinations on the Internet (i.e., the top 10 sites visited). According to Nielsen/Net Ratings, the top 25 sites visited by North Americans in October 2002 ranged from AOL Time Warner (number 1) to iVillage (number 25). Of these top 25 sites, the top 10 sites are listed in figure 4.38.

The average amount of time spent on these sites varied from 6 hours for AOL Time Warner to almost 14 minutes for Amazon. Knowing the type of site gives some indication of why people might be visiting the site. Amazon, for example, sells books and music, eBay is an auction site, Microsoft sells software and needed updates, and Google is a search engine. At least 4 of the top 25 sites visited are search engines — Google, Terra Lycos, Classmates, and Ask Jeeves. Several others might also be thought of as specialized search engines, providing information on specific topics (e.g., Earthlink, iVillage and the InfoSpace Network).

It is also possible to obtain a sense of what people use the Internet for by looking at the keywords used in searches for information. By way of example, the top 10 search terms used by Canadians on Google in March 2003 are listed in figure 4.39.

Figure 4.39 Top 10 search terms used by Canadians on Google, March 2003

Rank	Search term
1	Eminem
2	CNN
3	Christina Aguilera
4	Britney Spears
5	Avril Lavigne
6	Iraq
7	Air Canada
8	Good Charlotte
9	Anime
10	Tatu

Google also reports regularly on the top 20 "gaining" and "declining" search queries used by the full population of online users who visit its service. Figure 4.40 shows the results for March 2003.[30]

From figures 4.39 and 4.40 it can be seen that individuals tend to use the Internet for information on subjects of interest to them; that is, news, games, music, film, television and sports. But the top searches only tell us what is most popular. Other studies show that people's use of the Internet is more serious than a quick search for sports scores or pictures of favourite pop star. The Internet, for example, is also an important source of information about government, medicine, the environment and real estate. Moreover, in July 2000, it was estimated that 30 million Americans were averaging "83.2 hours a year looking for political information on the Internet."[31]

Figure 4.40 Top ten "gaining" and "declining" search queries used by all Google visitors, March 2003

Rank	Gaining Queries	Declining Queries
1	Al Jazeera	Joe Millionaire
2	Iraq	Nasa
3	Elizabeth Smart	Valentinstag
4	CNN	Michael Jackson
5	SARS	Great White
6	Linkin Park	Norah Jones
7	Formula 1	Chinese New Year
8	Ash Wednesday	Americas Cup
9	NCAA	Orlando Bloom
10	Adrien Brody	Lana Clarkson

In short, it can be seen from the above discussion that individuals use the Internet for a broad range of purposes. Among other things, these include information on the weather, sports, popular entertainment and government services.

C. Key Challenges

As noted in Chapter 3, the broad implications of changes in audience habits and preferences on the current broadcasting system in Canada are not difficult to see. Audiences will continue to fragment and competition will be more intense than it has been in the past. As the number of programs increase, the importance of marketing and program placement will increase. Encouraging interest in a program when it is competing against four other programs is one challenge, but attracting attention to a program competing against 350 or more programs is more difficult.

While audience fragmentation sounds new, it is not. Similar periods of change have swept through other media. Perhaps the best example is the magazine industry. During the 1950s, a few popular magazines enjoyed large audiences and were read in a majority of North American households. The most popular American magazines were *Life, Look, The Saturday Evening Post*, and *Liberty*. Popular Canadian magazines of the 1950s included *Saturday Night, Maclean's, La revue populaire, Le samedi* and newspaper inserts such as *The Star Weekly*. Almost all of these titles have disappeared, changed their approach, or only appear in commemorative editions on special occasions.

While some might lament the passing of these titles, there are many more magazine titles available in 2002 than at any time in the 1950s. General purpose magazines have mostly disappeared to be replaced by special purpose magazines dealing with subjects such as kayaking, home furnishings, fly-fishing and business. Those general purpose magazines (for example, *Chatelaine*) that have survived have in their own way become special interest magazines (i.e., focusing on the interests of a particular target group).

A similar process has occurred in book publishing. There have been many more new titles published during the last decade (1990 to 2000) than in any decade in the 500 years since the invention of the printing press. This has offered more choice for readers and a set of headaches for those who print and sell books, as it is much harder to keep track of hundreds of thousands of titles than a few thousand. The increase in the number of titles has also increased the importance of marketing and promotion campaigns. After all, if there are several hundred thousand titles in a bookstore, how is a potential reader going to find out about a particular book?

In short, technologies that were developed for other purposes have changed magazines and books, and now broadcasting. Sending information along a thin glass fibre was originally used to inspect machinery and in medicine; now this practice appears set to change the way we think about broadcasting and, by extension, the very nature of how Canadians will communicate in the years to come.

While the many challenges facing the Canadian broadcasting system may seem daunting, it is worthwhile remembering that Canadians, despite the ever-present cultural pressure and influence of the United States, have created a broadcasting system that covers the entire country, offers a great deal of choice and has produced successes in English and French in news, sports, children's programming, music, variety and public affairs.

Inexorably, the system is moving from "broadcasting" to "narrowcasting" or even to something resembling "unicasting." Renting a video might be thought of as a physical model of "unicasting." One person decides what to watch and then makes a set of arrangements (goes to the store, rents a video and so on) to do so. It is now possible to "subscribe" to a newspaper and "design" the newspaper to your specifications. Similarly, it is already possible to "subscribe" to services that provide music, movies or television shows at a time that is convenient to you. This is not unlike the model that is already in place for video-on-demand, television programming for movies and special events.[12]

The challenge, therefore, is to build on these successes, address problem areas and create the conditions for greater success in the coming decades, during which there will be a level of change in communications unlike anything Canadians have ever witnessed.

Endnotes

[1] Streaming video and audio can be defined as a means of starting to play a message while the rest of it is being copied. Streaming uses compression to make voice, video and data smaller so that it can be transmitted in less time. Streaming video and audio are used to broadcast video and audio over the Internet.

[2] The categories used by the CRTC for various Canadian content requirements are as follows: news, public affairs, sports, drama comedy (includes movies), variety, other.

[3] "Coverage" is also used interchangeably with "reach" (i.e., to describe the extent of a medium in reaching a group of people). In this report "coverage" describes the geographic extent of a medium.

[4] BBM, "TV Terms of the Trade," www.bbm.ca.

[5] Ibid.

[6] Ibid.

[7] MediaCourier, "Spot TV Advertising Terms," www.mediainternet.com.

[8] www.nielsenmedia.ca.

[9] Canadian Film and Television Production Association, *Profile 2003: An Economic Report on the Canadian Film and Television Industry*, February 2003.

[10] Ibid. See p.32-33.

[11] Data concerning CBC radio stations are provided in Chapter 6.

[12] Appendix 17 provides data sources for all figures in this report.

[13] The people meter has a built-in technique to ask for a response from the viewer if the channel has not been changed in the last hour but it still is prone to over-estimate the length of time people have been watching television.

[14] Press Release, 23 September 2002, www.bbm.ca.

[15] CBC Research (broadcast year September to August data), CRTC Data.

[16] Neilsen Media Research, Estimates for January 2003.

[17] CBC Research, *Shedding New Light on Viewing to Canadian Programming*, 31 May 2002.

[18] Meeting of the Standing Committee on Canadian Heritage, 22 November 2001.

[19] Canadian Media Research Inc., *Trends in Canadians use of TV*. Prepared for the Canadian Film and Television Production Association, August 2001. The report is based on Statistics Canada data.

[20] Meeting of the Standing Committee on Canadian Heritage, 27 November 2001.

[21] Ibid.

[22] Canadian Film and Television Production Association, *Profile 2003*, p. 28.

[23] www.statcan.ca.

[24] Edison Media Research, "The Need for Speed," www.edisonresearch.com.

[25] Press Release, 5 January 2001, "Ucentric Systems Announces Key Application Partnerships for Home Networking," www.ucentric.com.

[26] INT Media Group, 2001, www.cyberatlas.internet.com.

[27] "Internet Traffic Tops 350,000 Terabytes Per Month," *Cambridge Telecom Report*, 24 January 2003.

[28] It is also difficult to separate traffic specific to Canada from North American traffic. This is not an insurmountable problem since Canadian's use of the Internet is not much different than other people's use of the Internet (e.g., in Europe, the United States or Australia).

[29] Approximately half of all Internet traffic is data (e.g., financial information sent between institutions, the geographic location of vehicles on the highways and the results of experiments being shared among researchers). These data exchanges usually take place among people working for institutions (hospitals, universities, companies) and can be set aside for the time being.

[30] "Gaining" refers to the most common search requests submitted by online users during a given period; "declining" represents search requests that are receiving fewer search requests than an earlier measurement period.

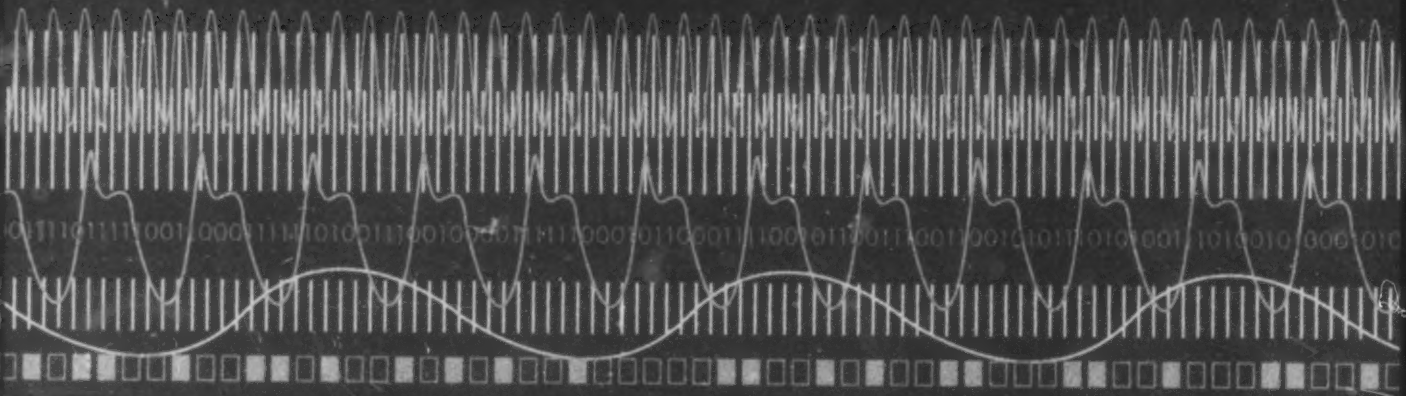
[31] Ron Facheux, "Campaigns and Elections," www.findarticles.com.

[32] The disadvantage of unicasting is that each client receives a separate data stream, thereby rapidly consuming network bandwidth.

Part 2

THE STATE OF THE SYSTEM

Chapter 5: Canadian Programming
Chapter 6: The National Public Broadcaster
Chapter 7: Not-for-Profit Broadcasting
Chapter 8: The Private Sector
Chapter 9: Community, Local and Regional Broadcasting
Chapter 10: Northern and Aboriginal Broadcasting



THE STATE OF THE SYSTEM

Chapter 5

Canadian Programming

Why do we do it? I'm not actually sure why we all do it. Maybe we do it out of passion. Maybe we do it out of love. Maybe we do it because we think we will be famous — we won't be. Maybe we do it because we think we will be rich — we won't be. But we are storytellers and it is what we do.

Ira Levy, Board Member, Canadian Film and Television Production Association, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002

A. Introduction

The previous chapter showed why today's television broadcasters are more aware of the need for high-quality programming than ever before. Indeed, the proliferation of television services has led to a situation where there is no longer a guarantee that programming will generate an audience by default. The consequence of this for Canadian broadcasters — whether in the private, not-for-profit or public sector — is that the production or purchase of high-quality programming that appeals to a mass audience is far more difficult and important than it once was.

The problem today's broadcasters face, however, is that the production of English Canadian programming that will attract a large audience has become very costly. This is because viewers, particularly in English Canada, have grown accustomed to American programs with high-production values such as *The Sopranos*, *Frasier*, *The West Wing* and *Sex and the City*. Further complicating matters is the fact that American programming is cheaper to buy and generates a higher rate of return for Canada's broadcasters than the purchase or production of made-in-Canada programming.

It should be pointed out, however, that this particular dilemma is hardly new. On the contrary, at the time of the last review of the *Broadcasting Act* in the mid-1980s, 98% of the drama and comedy that English-speaking Canadians were watching was foreign. Recognizing that this was a problem, the government, over time, has introduced a number of programs and policy measures designed to reverse this trend, with some promising results. For example, as was seen in Chapter 4, the overall supply of original English Canadian drama and comedy has increased significantly since the 1980s, from 2% of all drama and comedy in 1984 to 17% in 2001. At the same time, there have been moderate increases in the overall viewing of English Canadian drama and comedy, from 2% in 1984 to numbers consistently in the 7% to 9% range throughout the 1990s and early 2000s.

But given the relative size of these viewership numbers — whether 1984 or today — it can be understood why many witnesses — particularly those from the creative sectors — expressed discontent with the current situation. Some suggested that the CRTC was to blame for having changed its definitions of priority programming with the release of its new television policy in 1999. Others argued that it was the nature of Canadian content definitions, and the complexity and contradictory nature of the system that has been devised over time to fund and support Canadian programming. Meanwhile, others argued that it was in part due to the fact that Canadian private broadcasters are beholden to the programming decisions of the American networks and are, as such, relegating Canadian programs to weekends and times of the year when Canadians are not watching. For these reasons, many creators were of the view that the Canadian production sector is in crisis.

In parallel with the above points were counterarguments raised by Canada's broadcasters and distributors, who pointed out that Canada's broadcasting environment is not just slightly, but far more complicated than it was in the mid-1980s. Moreover, several witnesses observed that it is not just one factor that is making it difficult to produce and attract Canadians to Canadian programming, but several in combination, not the least of which is the fragmentation of today's broadcasting landscape. For these reasons, Canada's private broadcasters were far less inclined to agree with the allegation that Canadian television is in crisis.

It is worth noting that for a variety of reasons, the emphasis in this chapter will tend to be on English-language television. This is not because French-language television is without its challenges. On the contrary, French-language television was not much better off than English Canadian television in the mid-1980s, with a high percentage of French-speaking Canadians watching dubbed American programming. Since that time, however, circumstances have changed markedly — so much so that, today, the top 20 shows in Quebec are almost always made-in-Canada productions.

The reasons for the success in the French market are twofold. As witnesses told the Committee, French-language broadcasters realized in the mid-1980s that the way to break the dependence on American programming was to develop a star system and to produce programming which would permit French-speaking Canadians to see their stories and their communities. And, in parallel, there was a second reality, one which cannot be easily discounted. As several witnesses told the Committee, the francophone market benefits significantly from the fact that audiences prefer to see programming that was produced in their own language. By extension, this advantage has allowed broadcasters to focus their expenditures in ways that still permit them to produce or purchase popular programming. For these reasons, and others, much of the success that French-language television has enjoyed in recent years, will be exceptionally difficult to replicate in English Canada.

This does not mean, however, that lessons cannot be learned from this experience. On the contrary, as will be seen in Chapter 8, there are efforts already underway in the English-language market to borrow from the Quebec experience, not only to reinvigorate English Canadian programming, but to reinvent it.

But to a large extent, the differences between English and French television in Canada are secondary to the issues at stake in this chapter. Of concern here is that the bureaucracy has evolved in such a way that it has become a highly bewildering and exasperating experience for many of Canada's creators. Indeed, as this chapter will show, witnesses were at once eloquent and damning in their appraisal of Canada's support system for Canadian television programming.

With these thoughts in mind, this chapter focuses on the evolution of Canadian television programming policy in Canada. It looks at the development of Canada's programming policy, the ongoing refinement of definitions of Canadian content, the introduction of various funding mechanisms, and the changes in the regulatory regime for programming priorities and exhibition. In its concluding sections the chapter proposes a number of measures that will help ensure that distinctively Canadian programming, in French and English, of a high quality is funded, produced and viewed by Canadians.

Readers should note that this chapter does not address witness concerns with Canadian radio programming. Material on this subject is presented in Chapter 8.

B. Canadian Television Programming Policy: 1952-99

Historically, the fulfillment of Canadian broadcasting policy — that is, the creation of high-quality and distinctive Canadian television programming — has been encouraged through one or more of the following strategies:

- Direct government spending through agencies or Crown corporations.
- Subsidy programs to fund the production of Canadian programming.
- Market protection measures so that private companies could cross-subsidize Canadian programs from their profits.

The emphasis among these strategies has varied over time to meet changes in technology, the marketplace and the preferences of Canadian citizens.

In the early 1950s, the federal government mandated the CBC and Radio-Canada to produce and distribute television programming to Canadian audiences. As the only broadcaster for most of the first decade of Canadian television, these two networks addressed audience demand for American television by balancing their schedules with such programming.

Beginning in the late 1950s, as private stations were granted licences and entered the Canadian broadcasting market, regulations were introduced which required both CBC and private broadcasters to exhibit a certain percentage of Canadian programming. In the case of the private sector, this meant that a certain portion of advertising revenue from U.S. programs could be reinvested to buy or create new Canadian programming.

But this is not the only reason why Canada's broadcasters offered foreign content in these early years. It was also the case that Canadian broadcasters — particularly between the 1950s and the 1980s — did not always have enough Canadian programming to fill their schedules and, as such, needed American programming to fill out their line-ups. With the licencing of many new private services the CBC and Radio-Canada gradually phased out most foreign content in order to reposition both networks as more distinctively Canadian services.

The original policy model was successful in encouraging the production of news and sports programming; it was much less successful, however, with other types of programming, particularly English-language drama. But as the CRTC authorized more services for cable carriage, thereby fragmenting audiences and advertising revenue, the original policy model came under even greater stress. Subscriber revenues were growing, but audiences were fragmenting, meaning that broadcasters' overall revenues were insufficient to produce quality drama that could compete in the English-language marketplace.

In anticipation of these challenges, the federal government issued a new Canadian broadcasting policy statement in 1983. The purpose of this policy was to address changes in broadcasting technologies and the need to adapt the Canadian broadcasting system to the changing marketplace. The policy had the following goals:

- To maintain the Canadian broadcasting system as an effective vehicle of social and cultural policy.
- To make available to all Canadians a solid core of attractive Canadian programming.
- To provide a significantly increased choice of programming of all kinds in both official languages.

These goals, and the realization that the Canadian broadcasting system needed to be more competitive, were the underlying principles that guided the Broadcast Program Development Fund, a fund that was in operation from 1983 to 1996.

Broadcast Program Development Fund

The Broadcast Program Development Fund was part of the government's 1983 policy statement and was designed to encourage the production and broadcast of quality television programs created by private sector producers. There were two reasons for the Fund:

- First, the licencing of new broadcasting services — which was already underway — would create new opportunities for Canadian producers, not just domestically, but internationally.

- Second, the inherent difficulties of producing quality programming for a small population, coupled with Canadian broadcasters' access to low-cost American programming, was limiting the production and viewing of Canadian programming, particularly English-language Canadian drama.

At the time of the Fund's launch, Canada did not have a viable independent production sector. Chapter 8 has more on the genesis of this sector but, in short, this was a period during which most independent production was being done in-house for the CBC, Radio-Canada and private broadcasters.

The Canadian Film Development Corporation (now Telefilm Canada) administered the Broadcast Program Development Fund. This fund provided independent producers with loans, loan guarantees and equity investment of up to one-third the costs of the production of feature films, drama, documentaries, variety and children's programming. The main criteria for access to the Fund included:

- The requirement that all creative control should rest with Canadians.

- The expectation that a Canadian broadcaster had committed to air the program during peak view hours (7 p.m. to 11 p.m.).

- A desire to encourage regional program production.

Overall, the Fund was worth some $35 million dollars, rising to $60 million by 1987, with 50% of the monies reserved for productions to be aired on CBC.

In parallel with the creation of the Broadcast Program Development Fund, the CBC announced in 1983 that it was increasing its prime-time Canadian content levels, from 70% to 80% over five years. At the same time, the CRTC issued a policy statement on Canadian content for television, which introduced the notion of using conditions of licence to ensure that television broadcasters would purchase or produce Canadian content for broadcast.

The Cable Production Fund

In 1993, the CRTC launched a review of the changing communications landscape in a process known as a "Structural Public Hearing" (Public Notice CRTC 1993-74). The purpose of this review was to ensure that the objectives of the *Broadcasting Act* could still be met in Canada's rapidly evolving broadcasting environment.

As part of its structural hearing, the CRTC examined the economics of Canadian broadcasting and the extent to which it was possible to live up to the objective in Section 3 of the Act, which states that the system should "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity." The Commission found that Canadian television programming, whether produced in-house or independently, is far more expensive to acquire than foreign programming. This meant that even if a Canadian and foreign show drew the same advertising revenues and audience shares, the rate of return would always be smaller for the Canadian program, if not a net loss. For this reason, the Commission concluded that a financial incentive was essential if Canadian broadcasters were to acquire or produce Canadian drama, documentaries and children's shows. Accordingly in 1994, the Commission decided to amend the Cable Regulations to create the Cable Production Fund.

The main purpose of the Cable Production Fund was to assist in the creation and broadcast of high-quality Canadian programs in "under-represented" categories during peak viewing hours. The Fund was designed to provide a licence fee top-up to cover the difference between what was being offered by the broadcasters and what was needed by the producers to make their programs. The Cable Production Fund was short-lived, running from 1994 to 1996.

The Canadian Television and Cable Production Fund

On 9 September 1996, the Minister of Canadian Heritage announced the creation of the Canadian Television and Cable Production Fund (CTCPF). The CTCPF was a union of the Broadcast Program Development Fund, which had a $100 million budget at the time, and the Cable Production Fund. The justification for the creation of the CTCPF was that the Canadian production and broadcasting market was becoming increasingly competitive and, as such, there was a need to "ensure that we are able to maintain and increase the quantity and the quality of Canadian programming as we head into the multi-channel universe."

In 1998, the Canadian Television and Cable Production Fund was renamed the Canadian Television Fund (CTF). This fund represents a public/private partnership between four distinct groups: cable distributors, satellite distributors, the Department of Canadian Heritage and Telefilm Canada. The CTF will be described in detail in a subsequent section of this chapter.

C. Canadian Television Programming Policy: 1999 to the Present

As will be seen later on, a theme that animated much of the witness testimony that the Committee heard was grave concern with the consequences of the CRTC's 1999 television policy. To provide perspective on this debate, this section summarizes key elements of the Commission's new policy.

The CRTC's 1999 Television Policy

On 11 June 1999, the CRTC published the results of its Canadian television policy review. In Public Notice CRTC 1999-97, *Building on Success — A Policy Framework for Canadian Television*, the Commission established five tenets for its new television policy:

- An expanded notion of priority programming.

- An emphasis on the exhibition of Canadian programs in peak viewing times.

- Credits for Canadian drama.
- A requirement for local and regional reflection.
- Maintenance of the existing requirement levels for Canadian content.

The regulatory changes to support these principles came into effect on 1 September 2000. The rationale for the five tenets is outlined in the next sections.

Priority Programming

The notion of "priority programming," which was introduced with the CRTC's 1999 television policy, was an expansion of, and replacement for, the expression "underrepresented programs," that the Commission used up to that point. The rationale for this change was explained as follows:

> The expansion of this concept will form part of a more flexible policy framework. Given that U.S. drama dominates viewing of English-language drama, this flexibility will build on Canadian expertise and excellence in a wider variety of categories. The Commission considers that this will position Canadian programs competitively and enhance export potential.[2]

Furthermore:

> These priority categories will also expand choice for Canadian viewers and afford increased opportunities to see themselves and express themselves in their regional context. In expanding these categories the Commission intends to encourage the production of regional programming. Such diversity should increase the synergies between conventional television and specialty services, attracting more viewers to individual Canadian programs through increased opportunities for exhibition.[3]

With this in mind, the Commission identified the following priority programming categories for Canadian programming:

- Drama and Comedy
- Music and dance, and variety

- Long-form documentary
- Regionally produced
- Entertainment magazine shows

On 23 December 1999, the CRTC issued its definitions for priority programs.[4] For the drama and comedy category (known as Category 7), the following definition was provided: "Entertainment production of a fictional nature, including dramatization of real events. They must be comprised primarily of (i.e., more than 50%) dramatic performances." This category has the following subcategories:

- On-going dramatic series;
- Ongoing comedy series (sitcoms);
- Specials, mini-series, and made-for-TV feature films;
- Theatrical feature films aired on television;
- Animated television programs and films;
- Programs of comedy sketches, improvisations, unscripted work, stand-up comedy; and
- Other drama, including, but not limited to, readings, narratives, improvisations, tapes/films of live theatre not developed specifically for television, experimental shorts, video clips, continuous action animation (e. g., puppet shows).

Exhibition requirements

A major change triggered by the introduction of the CRTC's 1999 television policy was the abandonment of Canadian expenditure requirements as a condition of licence. This change was prompted by the Commission's conclusion that broadcasters would — by default — spend money on high-quality Canadian programming as long as they were still required to broadcast a certain number of hours of Canadian programming during peak viewing hours. As the Commission noted:

> The Canadian broadcasting system has become increasingly competitive. In such an environment, licensees need flexibility and diversity to attract the largest possible audiences and advertising revenues. The Commission believes that, in a competitive environment, licensees require high-quality programming to win audience loyalty.[5]

As such:

> The Commission is concerned that the existing expenditure requirements are complex and may not provide licensees with the flexibility they require to adapt their programming strategies to a highly competitive marketplace. In addition, concerns regarding the equitable application of expenditure requirements have begun to outweigh the benefits.[6]

Time Credits for Canadian Drama

Another element of the CRTC's new television policy was the introduction of 150% and 125% time credits for Canadian dramatic programming broadcast during prime time hours, to replace its existing 150% time credit system. According to the Commission, the amendments to the time credits were to recognize: "that drama is more expensive to create, produce and exhibit and competes with expensive foreign programs."[7] Thus, beginning in September 2000, multi-station ownership groups became eligible for 150% time credits against their required hours of priority Canadian programming if they broadcast drama or comedy programs during the peak viewing period, provided the program:

- is aired for the first time on television on or after 1 September 1998,

- has a duration of at least one half hour, including a reasonable amount of time for commercial breaks,

- is recognized as a Canadian program, qualifies for either a "C number" or an "SR number" from the Commission and achieves 10 points, and

- contains a minimum of 90% drama content.[8]

To qualify, programs must receive 10 points on the 10-point scale used by the Canadian Audio-Visual Certification Office, which is located in the Department of Canadian Heritage.

As for the 125% credit, this is awarded for programming that meets the first three conditions listed above, but has less than 90% drama content.

Local and Regional Reflection

The principle of local and regional reflection was introduced in the CRTC's 1999 television policy in response to a perceived decline in the amount of local and regional news and non-news programming. Concerning local news programming, the Commission has this to say:

> The Commission has carefully evaluated the availability, profitability and success of local news programs throughout the country. It has also considered the changing broadcasting environment and, in particular, the availability to Canadians of alternative sources of local news and information. In larger Canadian markets, viewers are able to choose among local or regional news provided by the CBC or Radio-Canada, and two to four private stations. In addition, some community cable channels provide regular local newscasts. A regional specialty service, Pulse 24, provides news and information primarily in southern Ontario. Various information services are also increasingly available on the Internet for those who need specific types of local information or who wish to discuss local issues.
>
> The Commission believes that, in the new television environment, there are sufficient market incentives to ensure that audiences will continue to receive a variety of local news without regulatory requirements.[9]

For these reasons, the Commission was of the view that it was no longer necessary that conventional, local television stations make quantitative commitments with respect to local news programs. That said, they would still be expected to demonstrate how they would "meet the demands and reflect the particular concerns of their local audiences, whether through local news or other local programming."[10]

As for priority local and regional programming (i.e., non-news) the Commission was very concerned by its apparent decline since the late 1980s. It noted that:

> There appear to be two major reasons for the reduction. First, as a result of the regulatory emphasis on expensive, peak time entertainment programs, the largest broadcasters have had fewer

> resources to devote to local programs. Second, the consolidation of the ownership of local stations in the hands of a few corporate groups has encouraged management to effect operational efficiencies that have reduced resources at the local station level.[11]

With this in mind, the Commission introduced the requirement that all broadcasters "demonstrate, at licencing, or in their licence renewal applications, how they propose to meet the demands and reflect the interests of their local audiences."[12]

Local and regional programming issues are discussed in Chapter 9.

Maintenance of the existing requirement levels for Canadian content

The fifth tenet of the CRTC's 1999 television policy was the preservation of the existing requirements for broadcasters for the delivery of Canadian programming. On this point, the Commission was quite clear that it saw no reason to change the existing content expectation, which requires that "not less than 60% of the broadcast year and not less than 50% of the 6 p.m. to midnight evening broadcast period ... be devoted to Canadian programs."[13]

The reasoning behind this expectation was explained by the Commission as follows:

> The Act requires that each broadcaster make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming. Canadian content regulations have been a primary tool in fulfilling that objective.
>
> The Commission notes that daytime television can provide important additional opportunities for broadcasters to reflect the particular needs and concerns of the communities they serve. The Commission, therefore, does not consider that changes to the existing regulatory requirement for Canadian content with regard to the percentages to be achieved are necessary.[14]

As noted above, witnesses identified certain aspects of the CRTC's new television policy as a root cause for some of the challenges that the Canadian broadcasting system faces today. In particular, some witnesses were of the view that distinctively Canadian drama and comedy has been disappearing from Canadian screens given the greater flexibility that the CRTC's 1999 policy grants Canadian broadcasters. As will be seen in a subsequent section, **the Committee is very troubled by what it heard and agrees that action must be taken to address these concerns about the CRTC's 1999 television policy**. For now, this discussion provides a short profile of how notions of Canadian content have changed over time.

D. Defining Canadian Content

The previous sections provided background on how Canada's television policy for the production and exhibition of Canadian programming has evolved over the past 50 years. In parallel with this evolution in Canadian television policy has been a gradual refinement of the concept of "Canadian content" for television programming. This section briefly summarizes the extent to which notions of Canadian content have changed over time. The importance of this discussion should not be underestimated. Indeed, as will be seen later on, a thread that runs through most of the witness testimony on this subject was that existing notions of Canadian content have become so convoluted and contradictory that, to a certain degree, efforts to produce distinctive Canadian programming are now being undermined by the very system that was designed to encourage and support such creative efforts.

The Early Years

Although Canada's first study of broadcasting, the Aird Commission of 1928-29, was concerned with the need for a national radio network, its motivation, as explained in Chapter 2, was the lack of Canadian programming.[15] Thus, to the extent that we understand modern conceptions of culture, it is reasonable to say that Canada's broadcasting policy for radio was this nation's first cultural policy.[16]

Since that time, Canadian content requirements have evolved considerably, particularly as they relate to television programming. At first, the main, unarticulated goal for television was to broaden the range of programs available to Canadians. Later, as the size of our broadcasting system increased from one public broadcaster and a few hours of programming each day, to several private sector broadcasters and many more hours of programming, the regulations evolved.

In November 1959, the Board of Broadcast Governors introduced quotas for television to ensure a broadcasting system that was "basically Canadian in content and character." The stated goal of these regulations was to assist in "maintaining Canadian identity and strengthening Canadian unity."[17]

"Canadian content" in these early years was based on the participation of Canadian writers, producers, directors, performers and technicians. The regulations did not include set ratios or a point system, but it was assumed that at least two-thirds of the main participants would be Canadian.[18]

Defining "Canadian character," however, was decidedly more difficult. Programs considered "basically Canadian in content and character" included: programs produced by Canadians; programs produced in Commonwealth or French-speaking countries; news broadcasts and commentaries; broadcasts of foreign events which included Canadian participants; broadcasts of foreign events of "general interest" to Canadians; and Canadian-produced films or reproductions.[19]

The regulations also stipulated that during any four-week period, at least 55% of a network or station's broadcast time should be devoted to Canadian programming. The content requirements were phased in gradually, beginning with a minimum requirement of 45% Canadian programming before 1 April 1961, and 55% before 1 April 1962. Many stations found it difficult to achieve the 55% requirement; consequently, in June 1962, the regulation was amended to reduce the Canadian content requirement to 45% during the summer months. This amendment was maintained during the summers of 1963 and 1964. In 1965, the 55% minimum requirement was reinstated. Subsequent amendments to the regulations stipulated a minimum Canadian content requirement of 40% between 6 p.m. and midnight, as well as an adjustment to the measurement period, from four weeks to calendar quarters of three months each.

Not surprisingly, there were critics of these regulations who argued that they did little to promote the quality of Canadian broadcasting. According to one account of this period:

> It seemed impossible to identify the peculiar characteristics of the Canadian culture and, in practice, it was unnecessary to attempt to do so. If Canadians had substantial opportunity to participate in broadcasting, their participation would tend to reflect the Canadian character and to maintain the Canadian identity.[20]

That said, despite their controversial nature, these early regulations set the stage for all subsequent efforts to regulate Canadian television content. As Paul Rutherford explains:

> By the mid-1960s, [a] 'new nationalism' had captured the fancy of assorted writers and academics. ... What was necessary to slay the American dragon, so it seemed, was a vigorous policy of Canadianization to patriate the communications industry.[11]

Canadian Content Today

There are several methods now used by federal support programs and related agencies to measure the extent to which programming is "Canadian." The Canadian Audio-Visual Certification Office (CAVCO), which is housed at the Department of Canadian Heritage, uses what is known in the industry as the CAVCO scale. This scale is used by program producers to obtain a tax credit and is required by the Canadian Television Fund and Telefilm Canada to determine funding eligibility.

Figure 5.1 shows how the scale awards points. Based on this scale, if a proposed production receives 6 out of 10 possible points, it is granted a Canadian Film or Video Production Certificate and becomes eligible for a Canadian Film or Video Tax Credit.

Figure 5.1 The Canadian Audio Visual Certification Office (CAVCO) points system

For a creative series to be recognized as a Canadian production, a total of at least six points must be allotted according to the following scale. Points are allotted for each Canadian who rendered the services.	Points awarded
Non-animated productions (live action)	
Director	2
Screenwriter	2
Lead performer for whose services the highest remuneration was payable	1
Lead performer for whose services the second highest remuneration was payable	1
Director of photography	1
Art director	1
Music composer	1
Picture editor	1
Animated productions	
Director	1
Screenwriter and storyboard supervisor	1
Lead voice for which the highest or second highest remuneration was payable	1
Design supervisor (art director)	1
Camera operator where the camera operation is done in Canada	1
Music composer	1
Picture editor	1
Layout and background where the work is performed is in Canada	1
Key animation where the work is performed is in Canada	1
Assistant animation and in-betweening where the work is performed is in Canada	1

The CRTC also uses the CAVCO scale and additional criteria to identify Canadian programs and — by extension — to determine whether broadcasters have devoted a minimum percentage of airtime to "Canadian content." Figure 5.2 shows the CRTC's Canadian content requirements for various types of broadcasters.

Figure 5.2 Canadian content airtime requirements

Broadcaster	Requirements
CBC / SRC television	75% broadcast day 80% peak viewing (7:00 to 11:00 p.m.)
Private television broadcasters	60% overall yearly 50% from 6:00 p.m. to midnight
Pay and specialty television services	15% to 100%
Pay-per-view services	1:20 Canadian: non-Canadian films 1:7 Canadian: non-Canadian events

But the existing Canadian content point system is far more complex than the above paragraphs might suggest. Along with the 10 CAVCO points used by the Canadian Television Fund are a set of contradictory definitions, additional criteria and points scattered throughout the federal support system, not to mention several others used by the various provincial and territorial support systems. In 2002, for example, the CTF used "visible element" criteria to determine the eligibility of shows for a licence fee top-up. Figure 5.3 shows the CTF's 2002 criteria for the variety and performing arts category.

Figure 5.3 "Canadian Visible Element Criteria" for variety or performing arts programming, 2002

Project criteria	Points (maximum of 15)
All lead and featured performers are Canadian.	7.5
The project is entirely focused on Canadian subject matter.	7.5
For Variety programs, at least two-thirds of the performed material must have underlying rights created solely by Canadians.	7.5
In Performing Arts programs, the underlying work must be written, composed, or created solely by Canadians.	7.5

In short, the existing Canadian content system for the certification, funding and production of Canadian programming can best be characterized as a highly complex and interdependent set of subjective and objective measures that are used by various agencies within the Canadian broadcasting system to determine the extent to which a Canadian television production is, or is not Canadian, and should, or should not be funded. As will be seen later on, this system was a sore point for many witnesses. For now, this chapter turns to a consideration of the various direct and indirect funding sources that exist to help Canadians make Canadian television programs.

E. Funding Support

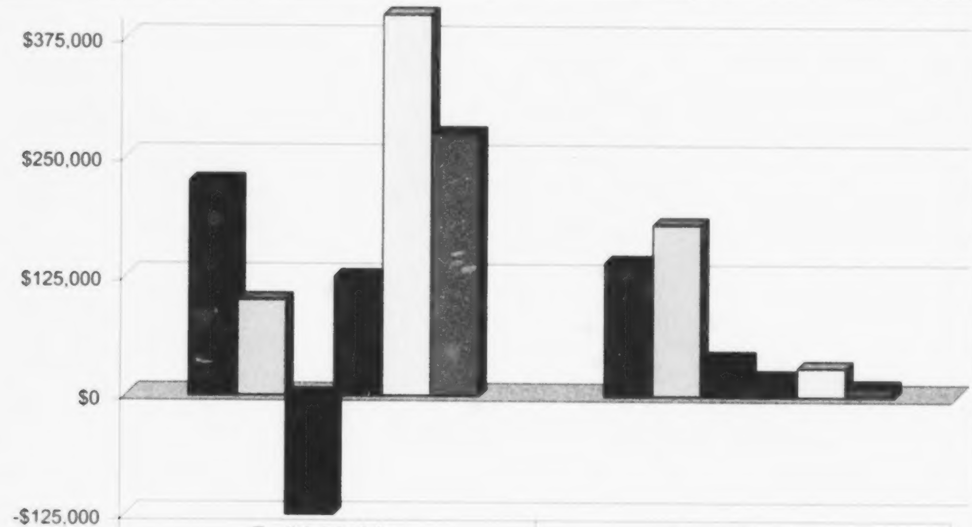
Since the beginning of private broadcasting in Canada, the regulatory framework has required Canada's private broadcasters to contribute to the development of Canadian programming. To do this, private broadcasters have used revenues generated from profitable foreign shows to produce or purchase less profitable Canadian programs.

Figure 5.4 shows estimated broadcaster costs, revenues and profits for the broadcast of a one-hour drama on Canadian television. As can be seen, even after subsidies and advertising revenues are taken into consideration, an English-language Canadian broadcaster averages a net loss of about $125,000 for each hour of Canadian drama, and a net profit of about $275,000 for each hour of American-made drama. In the French-language market, however, modest profits are possible with Canadian-made drama, given that these programs are popular and can be made at a lower cost.

Witnesses told the Committee, however, there is now some concern that the cross-subsidy model is under pressure. This subject will be returned to in Chapter 8. For now, it is worth noting the main reasons for this. The first is that the price of American shows could rise. This was suggested by Mr. Alain Gourd, Executive Vice-President with Bell Globemedia:

> Broadcasters have relied for many years on popular American programming to cross-subsidize this kind of Canadian content. However, today American programs are becoming more expensive, and the traditional model is breaking down. We have a game plan for success in Canadian programming. At CTV, we are using the foundation provided by the Canadian Television Policy to focus our efforts on finding ways to create more popular, more successful Canadian programming.[22]

Figure 5.4 Estimated cost, revenues and profits for the broadcast of a one hour drama on Canadian television, 2000-01 (Canadian dollars)



	English television	French television
■ Canadian drama: Licence cost per hour	$225,000	$140,000
□ Canadian drama: Ad revenue per hour	$100,000	$180,000
■ Canadian drama: Profit per hour	-$125,000	$40,000
■ American drama: Licence cost per hour	$125,000	$20,000
□ American drama: Ad revenue per hour	$400,000	$30,000
■ American drama: Profit per hour	$275,000	$10,000

An indication that this may be true comes from the program expenditure data of private broadcasters in Canada. As will be seen in Chapter 8, Canadian broadcasters expenditures on foreign programming have increased significantly in recent years at least in part because of changes in the value of the Canadian dollar.

A second reason is that the producers of U.S. television programs may decide to refuse to sell certain shows to Canadian broadcasters. For example, if a U.S. broadcaster knows that it can increase advertising rates and benefit from spillover viewing in Canada, it might instead sell the rights for the United States and Canada to an American network.[23]

A third possibility is that producers may, in the near future, find ways to sell their shows directly to individual viewers, thus circumventing broadcasters, both U.S. and Canadian. This point, which was discussed in

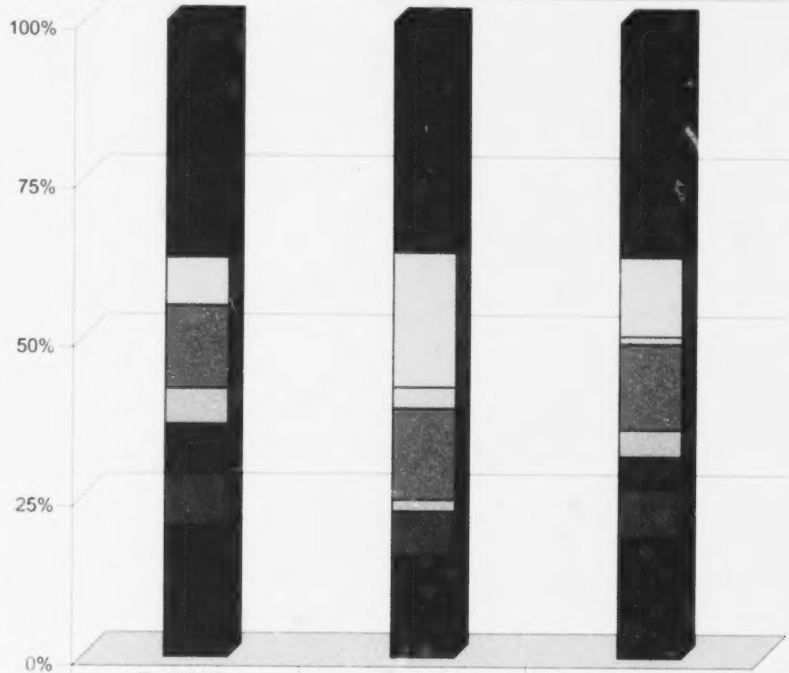
Chapter 4, may well come about as it becomes easier to acquire programming on demand, for example, via the Internet.

In short, given the cost of developing an hour of high-quality Canadian television, it can be seen why very little would be produced without support from the Canadian taxpayer. As numerous witnesses explained, the Canadian market is simply too small to support reasonable amounts of high-quality programming, particularly English-language Canadian drama. For this reason, Canada's federal and provincial governments, taken together, help cover much of the Canadian programming that reaches our screens. Indeed, if we take the example of English-language Canadian drama, at least 50% of all costs — in the form of payments from the Canadian Television Fund (CTF) and tax credits, both federal and provincial — are covered directly or indirectly by Canadian taxpayers. Foreign sales and private television funds make up most of the rest of the funding.

Some sense of the way production costs are divided can be seen in figure 5.5, which shows the overall funding to Canadian drama and comedy productions by the Canadian Television Fund. As can be seen, in 2001-02, the Canadian Television Fund contributed nearly $112 million (37%) of all funding to the total production budgets of all drama and comedy productions that received such support. Moreover, the CBC/SRC contributed almost $40 million (13.5%), the federal government added another $23 million (7.6%) and provincial governments accounted for a further $35 million (11.5%). Given that about 60% of the CTF's budget is public money, this means that for productions supported by the CTF, Canadian citizens contributed more than 50% (about $150 million) of the funds required to produce distinctively Canadian drama and comedy in 2001-02. In other words, if an hour of CTF-supported Canadian drama cost $1 million, taxpayers contributed at least $500,000 for the creation of that hour.

With the above economic considerations a backdrop to this discussion, the next sections profile the main direct and indirect funding sources for Canadian program production. These include: The Canadian Television Fund, Telefilm Canada, the National Film Board, tax credits, provincial and territorial support and private program funds.

Figure 5.5 Distribution of financing for Canadian drama and comedy productions supported by the Canadian Television Fund, 2001-02



Totals
English television
$194,168,746
French television
$108,702,764
Total
$302,871,510

	English ($)	French ($)	Total ($)
■ Canadian Television Fund	72,279,069	39,553,992	111,833,061
□ Conventional broadcasters	14,777,069	23,072,229	37,849,516
□ Educational broadcasters	0	3,625,372	3,625,372
■ CBC / Radio Canada	25,303,398	15,597,394	40,900,792
□ Specialty and pay	10,969,710	1,951,000	12,920,710
□ Foreign sources	0	0	0
■ Distributors	15,100,938	165,000	15,265,938
■ Other federal sources	15,752,920	7,405,169	23,158,089
■ Provincial support	19,464,142	15,295,762	34,759,904
■ Producers	12,181,954	1,186,846	13,368,800
■ Private funds	7,533,778	850,000	8,383,778
■ Other Canadian sources	805,550	0	805,550

The Canadian Television Fund

As noted earlier, the Canadian Television Fund (CTF) is a public/private partnership with an annual budget of about $250 million. Funded programs have included: *This Hour has 22 Minutes, Cold Squad, Un gars, une fille,* and *Histoires de Filles*. The Government of Canada, cable companies and direct-to-home satellite service providers support the Fund. It is an independent, non-profit corporation, governed by a Board of Directors comprised of representatives from the television, cable, production, film and video distribution industries, as well as representatives from the Department of Canadian Heritage and Telefilm Canada.

The CTF's mandate is:

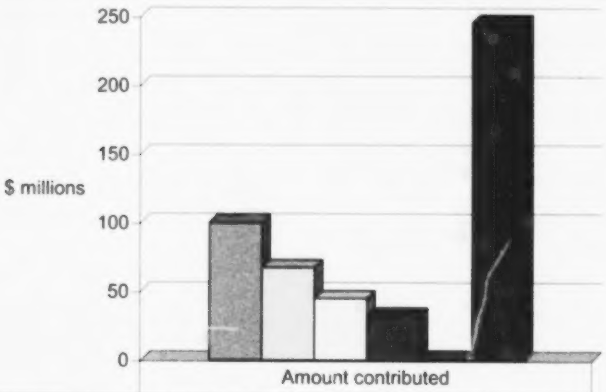
- To encourage the financing and broadcasting of high-quality Canadian television productions.
- To reflect Canada to Canadians by assisting the creation and broadcast, in prime-time, of high-quality, culturally significant Canadian programs in both official languages in the genres of drama, children's, documentaries and variety and performing arts, and by both majority and minority official-language sectors.
- To support Aboriginal language productions in the eligible genres.

Figure 5.6 shows the breakdown in funding sources for the CTF in 2001-02. As can be seen, the federal government was the single biggest contributor to the fund in 2001-02, contributing $100 million via the Department of Canadian Heritage and $45 via Telefilm Canada. It is important to emphasize, however, that the total budget for productions financed directly and indirectly through the Fund in 2001-02 was $802.2 million (see figure 5.8).

That said, the Committee notes that in February 2003, the federal government renewed its support to the CTF for another two years, with an allocation worth $150 million. In other words, the value of the Government of Canada's involvement in the CTF will be $75 million in each of the next two fiscal years, which is $25 million less than in previous years.

> **The Committee condemns the federal government's decision to reduce its contribution to the Canadian Television Fund and urges the government to reverse this decision.**

Figure 5.6 Breakdown of contributions to the Canadian Television Fund, 2001-02

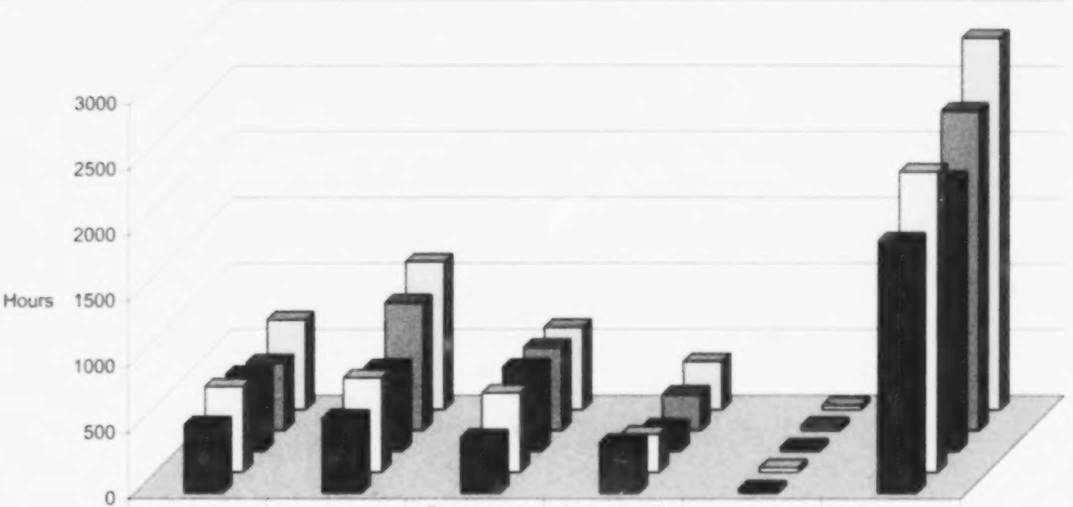


	Amount contributed
▨ Canadian Heritage	100
☐ Cable companies	67.4
☐ Telefilm Canada	45
■ DTH satellite companies	32.5
■ Global TV (POP Fund)	1.2
■ Total value	246.1

Indeed, as this report will show, the Canadian broadcasting system is a highly complex and interdependent system. As such, the withdrawal of $25 million represents losses far greater for the Canadian broadcasting and production industries as a whole. For example, with less funding, it is certain that some productions — including some planned by the CBC and Radio-Canada — will not receive funding. Furthermore, without CTF support, some productions will be cancelled, thereby denying jobs to Canadians, not to mention the loss of original and distinctive Canadian programming that would otherwise have been created.

Further evidence of the impact of the Canadian Television Fund on the Canadian broadcasting industry can be seen in figure 5.7. This figure shows that the Canadian Television Fund has contributed significantly to the creation of Canadian programming since 1997-98. For example, in the drama/comedy category, the creation of at least 600 new hours of Canadian drama was supported in each of the past four years. Equally impressive has been the steady rise in the production of documentary programming, from 517 hours in 1997-98 to more than 1,120 hours in 2001-02. Similarly, total support has increased steadily, from about 1,900 new hours in 1997-98 to more than 2,800 new hours of programming in 2001-02.

Figure 5.7 Total hours of programming supported by the Canadian Television Fund, 1997-2002

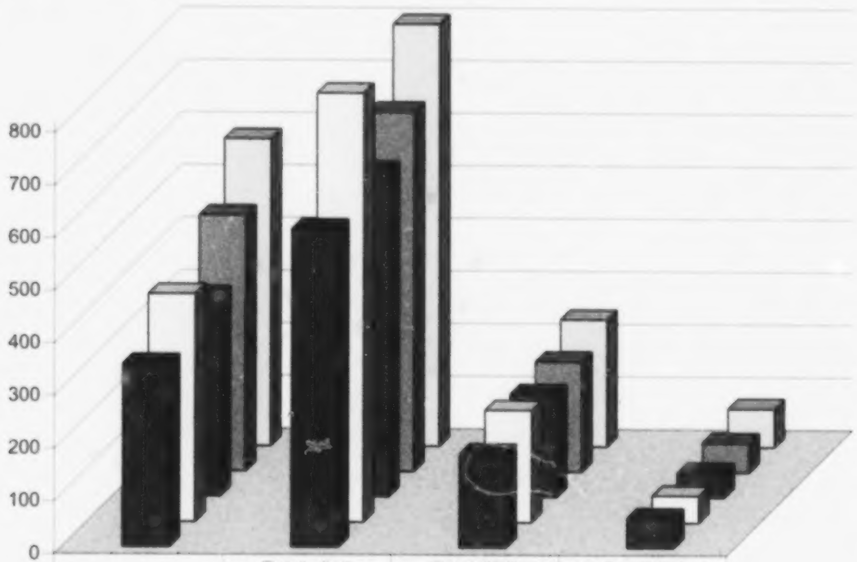


	Children's	Documentary	Drama and comedy	Variety and perf. arts	Feature films	Total
■ 1997-98	517	568	418	380	28	1,911
□ 1998-99	647	713	600	285	33	2,278
■ 1999-00	583	634	638	181	30	2,065
▨ 2000-01	513	968	631	275	37	2,424
□ 2001-02	682	1,121	624	364	32	2,822

Figure 5.8 shows the total value of projects supported by the CTF and participating broadcasters between 1997 and 2002. This figure reveals a relatively steady rise in CTF and broadcaster support during this period, with total supported projects increasing from 347 in 1997-98 to 583 in 2001-02. It also shows a gradual (albeit unsteady) rise in the total value of CTF contributions, with total contributions increasing from \$177.6 million in 1997-98 to \$241.4 million in 2001-02. As for the overall value of projects supported by the CTF, it can be seen that there were some fluctuations, with total productions budgets ranging between \$600 and \$800 million.

Applicants apply for funding through one of the Fund's two separate programs: the Licence Fee Program or the Equity Investment Program, the latter of which is administered by Telefilm Canada. These two programs are described below.

Figure 5.8 The total value of projects supported by participating broadcasters and the Canadian Television Fund, 1997-2002

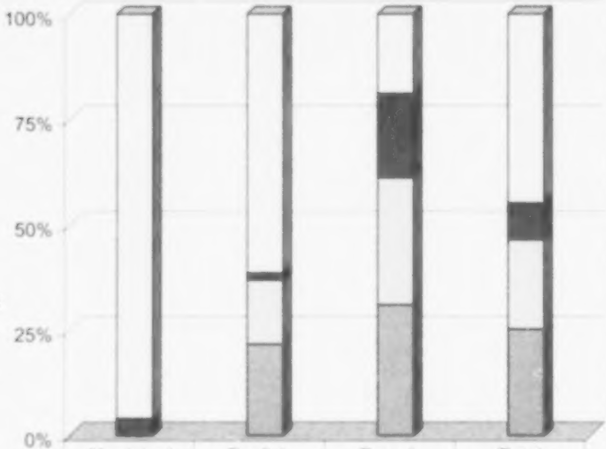


	Projects supported	Total of all production budgets (millions)	Total CTF contribution (millions)	Total # of participating broadcasters
■ 1997-98	347	$604.0	$177.6	56
□ 1998-99	432	$814.6	$212.6	51
■ 1999-00	380	$617.7	$195.2	47
▨ 2000-01	486	$682.8	$209.2	56
□ 2001-02	583	$802.2	$241.4	73

The Licence Fee Program

The Licence Fee Program (LFP) contributes to the production of Canadian television and feature films in the form of a non-recoupable top-up to the licence fee that broadcasters must pay to acquire programming. To receive LFP funding support, a project must be licenced by a Canadian broadcaster, whether conventional, educational or pay and specialty. Typical LFP contributions range from 15% to 35% of total production costs. In 2001-02, the LFP contributed $138 million, that is, 17% of the total production budgets of projects supported. As for broadcasters, they committed more than 30%, or $230 million, towards the production of CTF funded productions. Figure 5.9 shows the total contribution of Canadian broadcasters to broadcast licence fees in 2001-02.

Figure 5.9 Broadcast licence fees paid by Canadian broadcasters to projects supported by the Canadian Television Fund in 2001-02 ($ millions)



Totals
Aboriginal: $1.25
English: $137.8
French: $91.2
Overall: $230.3

	Aboriginal	English	French	Total
☐ Pay and specialty	1.2	84.7	17.2	103.2
■ Educational	0.05	2.3	18.2	20.1
☐ Private conventional	0.0	21.0	27.5	48.6
▨ CBC/SRC	0.0	29.8	28.2	58.0

The Equity Investment Program

The Equity Investment Program (EIP) can contribute up to 49% of a project's allowable costs for the production of Canadian television programs and feature films through a direct cash investment. The intent of the EIP is to recoup on investment. In many instances, however, there is no recoupment, making the EIP investment, for all intents and purposes, a grant. The EIP also contributes to the development of television programs and feature films through the provision of advances. In 2001-02, the CTF provided development financing worth $4.5 million to 252 projects. Telefilm Canada administers the EIP envelope on behalf of the Canadian Television Fund.

Telefilm Canada

Telefilm Canada is a federal cultural agency dedicated to the development and promotion of the Canadian film, television, new media and music industries. Telefilm reports to the Department of Canadian Heritage.

Telefilm's mission is to provide financial and strategic assistance to the industry in the production of high-quality works (e.g. feature films, drama series, documentaries, children's programming, variety shows and new media products) that reflect Canadian society, including its linguistic duality and cultural diversity. Telefilm Canada's current annual budget is approximately $230 million, of which $45 million was contributed to the CTF in 2001-02.

Telefilm's initiatives aim to ensure the widest possible audience for Canadian works, both in Canada and abroad, through support for distribution, export, versioning, marketing and industry promotion at Canadian and foreign festivals, markets and other events. Telefilm Canada maintains four offices in Canada (in Montréal, Toronto, Vancouver and Halifax), along with a European office, located in Paris.

The National Film Board

Created in 1939, the National Film Board of Canada (NFB) is a public agency that produces and distributes films and other audiovisual works, which reflect Canada to Canadians and the rest of the world. Since its beginnings it has played an important role in Canadian and international filmmaking. Its founder and the first Government Film Commissioner, John Grierson, wanted to make the NFB the "eyes of Canada" and to ensure that it would "through a national use of cinema, see Canada and see it whole: its people and its purpose."[24]

With an annual parliamentary appropriation worth $60.6 million, the National Film Board is a unique centre for the creation of audiovisual materials. Its mandate remains to produce and distribute films and other audiovisual works intended for Canadian audiences and foreign markets, in order to increase viewers' knowledge and understanding of the social and cultural realities of Canada.

NFB films are produced in both official languages through its English and French programs, by in-house and independent filmmakers across the country. The NFB maintains production facilities in Vancouver, Edmonton, Winnipeg, Toronto, Ottawa, Montréal, Quebec City, Moncton and Halifax.

The NFB has established a distribution network with partners in the public sector (public and school libraries) and private sector (distributors, cataloguers, movie theatre chains, video retail outlets, etc.) to provide access to its films and videos, thus ensuring the NFB's presence in all provinces and territories. NFB productions are often aired by conventional and specialty broadcasters, and Canadians can purchase NFB videos by calling its toll-free number, or from its virtual catalogue on the NFB Web site. Internationally, the NFB has offices in London, Paris and New York.

In short, the National Film Board is an integrated production and distribution organization with an extensive film collection, a conservation laboratory, and post-production and research and development facilities located at its operational headquarters in Montréal. Its Government Relations service operates from Ottawa, while its Communications and Distribution Services, Human Resources and Administration branches are principally located in Montréal.

Tax Credits

Tax credits represent an indirect way whereby Canadian television production is supported. The Canadian Audio-Visual Certification Office (CAVCO) co-administers the Canadian Film or Video Production Tax Credit (CPTC) and the Film or Video Production Services Tax Credit (PSTC) with the Canada Customs and Revenue Agency (CCRA).

The objective of the Canadian Film or Video Production Tax Credit is to encourage Canadian programming and to develop an active domestic production sector. This fully refundable credit can be up to 12% of the total cost, net of assistance, of an eligible production. Under the CPTC program, CAVCO performs two distinct functions: (1) Canadian content recognition, and (2) estimation of the eligible expenses of production. For a production to qualify as Canadian content for tax credit purposes through CAVCO, it must meet specific criteria for key creative personnel and project costs. The CPTC is available at a rate of 25% of eligible salaries and wages incurred after 1994. Eligible salaries and wages qualifying for the tax credit may not exceed 48% of the cost of the production, net of assistance, as certified by the Minister of Canadian Heritage. Therefore, the tax credit could provide assistance of up to 12% of the cost of production, net of assistance.

The Film or Video Production Services Tax Credit (PSTC) is designed to enhance Canada as a location of choice for film and video productions employing talented Canadians, strengthen the industry and secure investment. The PSTC is available at a rate of 11% of qualified Canadian labour expenditures.

Provincial Support

Provincial support is largely delivered through direct support and tax credits. There are 10 provincial and 2 territorial agencies that are major contributors to the Canadian film, television and new media industries.[25] In total, these agencies contributed between $213.1 million and $272.8 million annually from 1999 to 2002 to Canada's film, television and new media industries. This includes contributions of between $39.6 million and $43.8 million in direct funding support with a wide range of financing instruments such as development support, production financing ranging from equity financing to grants, marketing support, professional development assistance, festival funding and organizational or company development funding.

Tax credits are a core component for many provincial agencies, with total per annum contributions of between $173.5 million and $230.9 million between 1999 and 2002. Provincial and territorial agencies target their support in markedly different ways across the country. Some provinces such as British Columbia, Saskatchewan, Manitoba, Nova Scotia, PEI, New Brunswick, Quebec and Newfoundland offer both direct funding and tax instruments; some, like Ontario, have opted for a more heavily weighted tax credit system; others, like Alberta, the Yukon and the North West Territories do not have a tax credit system but rely entirely on direct funding support. Details of the various provincial and territorial support programs are provided in Appendix 9.

Private Sector Support

Apart from the Canadian Television Fund, which receives about $150 million annually in private sector support from cable and satellite companies, are several smaller, private sector funds. Appendix 9 lists and describes many of these funds.

F. What the Committee Heard

The preceding sections have provided some sense of the complexity of the environment witnesses were talking about when they addressed the Committee. This section reviews what the Committee heard. To begin, it makes a few observations on some of the core differences between the English and French-language broadcasting markets in Canada. Thereafter, a short summary of what witnesses told the Committee about the state of Canadian television programming is provided.

The English and French Television Markets

Some detail on the evolution of French and English-language programming was provided in Chapter 4, in the introduction to this chapter and will again be raised in Chapter 8. While a simple description of the different types of programming produced is useful, these differences do not capture some of the fundamental differences between these two markets. For a variety of reasons, Canada's French-language market has been much more successful in the creation of programming that attracts large audiences than the English-language market. The principal reasons have to do with the fact that French-language creators, in the main, are not in direct competition with French-language productions from France, or English-language productions from Canada or the United States. Other reasons can be attributed to some combination of creativity, ingenuity, the development of an indigenous star system and government support. Thus, while it is rare in English Canada to have an audience of even 10% for a Canadian drama, it is quite common in Canada's French-language markets to have audience shares of 20%, 30% or higher for Canadian productions.

Quebec's Constellation of Stars

Radio-Canada in Montréal, along with private sector broadcasters in Quebec, have been and continue to be the mainstays of a flourishing star system.

The evolution of radio and television broadcasting in Quebec, as in other parts of the country, is multifaceted and complex, involving highly developed communications technologies, advertising and budgets, producers and technical crews as well as creative and performing artists. Nonetheless, it is the central role played by artists, particularly performing artists and writers, in the development of broadcasting in Quebec that is remarkable and probably unique in Canada, and we can conclude that the high levels of viewership attained by indigenous French-language

It is also important to remember that the success of French-language Canadian programming does not rest on a few exceptional miniseries, but is a phenomenon that applies to a long list of ongoing series such as *Fortier*, miniseries such as *Omerta*, talk shows such as *Deux filles le matin*, children's programming such as *Watatatow*, *téléromans* such as *Virginie*, and comedies such as *La Petite Vie* and *Un gars, une fille*.

To some extent, the challenges faced by Canada's English-language programs producers are entirely different from those faced by their French-language counterparts. English-language television programs have always had to compete with programs originating from the United States, a country with a well-established television and film industry that produces programming that is attractive not just to English-language Canadians, but to audiences around the world. This challenge was noted by the Royal Commission on Broadcasting in 1957 when it observed:

> The problem of the influence on Canada from the United States is not mainly that American television programmes are too bad, but many of them are, in a special sense, too good. ... The great artistic wealth of the United States is able to produce programmes of great variety and interest. Their material wealth enables them to command the services of good writers and performers, and the best technical skills in programme production.[26]

This capacity to attract the best talent means that it has always been very easy for the most capable English-language Canadians — whether writers, producers or actors — to migrate south and work in the United States. The list of talented Canadians who have worked in the United States is a veritable who's who, and includes such notables as Dan Aykroyd, Pamela Anderson, Raymond Burr, Neve Campbell, James Cameron, John Candy, Jim Carey, Sarah Chalk, John Colicos, James Doohan, David James Elliot, Dave Foley, Michael J. Fox, Tom Green, Graham Greene, Lorne Greene, Paul Gross, Phil Hartman, Jillian Hennessy, Michael Ironside, Norman Jewison, Rich Little, Norm MacDonald, Raymond Massey, Lorne Michaels, Colin Mochrie, Rick Moranis, Carrie-Anne Moss, Mike Myers, Kate Nelligan, Leslie Nielson, Catherine O'Hara, Matthew Perry, Mary Pickford, Christopher Plummer, Jason Priestley, William Shatner, Martin Short, Jessica Steen, Donald Sutherland, Dave Thomas and Scott Thompson.

An added factor is the advantages offered by the size of American market. In simple terms, the American television market is large enough that it can support, without subsidies, a large film and television industry where a few successes can easily cover the costs of the many films and television series that are not successful.

This reality was reflected in the testimony of Mr. Richard Stursberg when he told the Committee:

> ... the most beautiful programs in the United States, programs like *The West Wing* or *ER*, they cost approximately $2.2 million to make per hour. ... The reason the Americans, of course, can spend this amount of money is that they have a base of citizens, a population

programs is closely aligned with the identification, encouragement and promotion of well-known and popular stars in the Quebec broadcasting and entertainment industries.

A survey of the last 50 years of television programming in Quebec readily confirms the essential role that the stars, or "les vedettes" as they are known in French Canada, have played in its viability and popularity. In many instances, it was the program which launched a star, (Maria Orsini in Les Filles de Caleb) or again, it was the star who launched the program, (Olivier Guimond in Cré Basile). Yet throughout a half-century of development and growth, the emergence, nurturing and celebration of "les vedettes" has been a constant in the broadcasting and entertainment industry in Quebec. As an interesting aside, it could be argued that a similar phenomenon took place at the Stratford Festival during this same period, and that again, the role of the artists who were, and who are still celebrated there, is of paramount importance to the Festival's success. Indeed most if not all of the headliners at the Festival are recognized stars of the stage, both domestically and internationally.

Over the years, a symbiosis has developed between the viewing public in Quebec and the performers and writers who entertain them. This bond goes well beyond admiration and appreciation. It can best be described as an ongoing love-affair and a celebration between the public and their artists. The relationship is both dynamic and interactive; the artists give voice to a time and a place that all can share in, and in turn, the public listens to what artists have to say and celebrates their successes.

Indeed, parallels can be drawn between the adulation bestowed by the Quebec public on its sports idols, Richard, Béliveau and Boucher, and that lavished on their artists, Deschamps, Michel, Lapointe.[27] The public in Quebec cares as much for its stars on stages and screens as it does for those in a hockey arena. Put in a national context, this may also be unique to the province of Quebec.

> that is dramatically larger than the base of English Canadians, so they can lay those costs off over a vast base. …
>
> Canadian programs typically return for an hour of drama between $65,000 and $90,000 an hour, and because they're distinctive, they get very little sale abroad. If that's all the money you could raise, there's no possible way you could make programming that would compete in quality with $2.2M an hour. That's the reason it is subsidized. We subsidize it up to a maximum of $1 million an hour, and private broadcasters pay more than they make on English Canadian programming. But it's very clear that if we did not do this, there would not be … English Canadian drama and other programming … because of the economics of the situation.[29]

And there are at least two other factors that hurt English Canadian producers. First, while the average American prime time drama costs about $2 million[30] certain shows — such as a pilot episode — cost much more. As Ms. Loren Mawhinney, Vice-President, Canadian Production, Global Television Network, explained to the Committee:

> … the production budget for the last season of *Traders*, all 13 episodes, cost less than the production budget for the hour-long pilot of [*The*] *West Wing*, made during the same year. The entire season of Traders cost $12 million while the one-hour pilot [for *The West Wing*] cost approximately $14 million.[31]

Speaking to this same point Mr. Alain Gourd, Group Executive Vice-President, Corporate, Bell Globemedia Inc., noted:

> … in terms of production value, a program such as *Cold Squad* gives us a production value of close to $1 million, while the total investment in a production of [*The*] *West Wing*, which varies with each episode, may be from $3 million to $5 million.[32]

Furthermore, because the full cost of shows such as *The West Wing* are easily recaptured within the American market, additional revenue made through sales to foreign markets, and video or DVD sales is pure profit, meaning that American networks can sell their programming to Canadian networks at very low cost. As Mr. R.H. Thomson, Actor, Writer and Broadcaster, Alliance of Canadian Cinema, Television and Radio Artists, explained to the Committee:

The Economics of Drama Production

The industry that produces U.S. television continues to be willing to invest huge sums in the development and piloting of a single hour of drama or comedy, even though the chances of success are very small. The risk factor is commonly cited at ten pilots for every one accepted — and there are many more shows whose concept and script is funded that don't even reach the pilot stage. Finally, many shows that are accepted for broadcast don't survive their first year.

It is this willingness to accept huge losses for a single hit show that makes it so hard for Canadian domestic producers to compete with this model. An hour-long pilot of U.S. drama is said to cost in excess of $5 million U.S. dollars, and the ongoing costs are perhaps half of that (bearing in mind that costs are variable in this area — and that costs rise for successful shows in subsequent seasons as stars renegotiate.)

With total financing from all sources for English drama/comedy at $191 million[33] Canadian, we would, if we adopted the U.S. model, be able to generate 10 pilots and 2 ongoing series, for a total of about 36 hours of television annually. It is evident that Canada is not playing in the same league. The Canadian Television Fund cannot subsidize enough episodes of enough series to make a real impact on total viewing numbers.

The American production machine can generate this level of risk investment because the worldwide market for U.S. drama and comedy is so large that, when a show is a hit, it generates very large revenues indeed. If it lasts long enough to go into syndicated reruns, as *Cheers*, *Seinfeld*, and *The Simpsons* have done, then it can generate profits for more than a decade.

It is not, theoretically, impossible for a series from another country to achieve this kind of success. Of course, some very successful series (in terms of U.S. exposure) have been shot in Canada, but they have explicitly catered to an American audience.[34]

What would it take to produce a worldwide hit drama series using Canadian stories and creative and financial resources?

Most of the elements are available. We have the craftspeople in abundance. And Hollywood is full of English Canadian stars and writers. It is not really

> The American producers sell below cost in our market. We can't sell below cost in our own market, so we're being culturally dumped on. To maintain a space in the economic environment, in which we actually can produce Canadian programs that are watched, we need structural adjustments ...[11]

The Goals of the Funding System

The Committee heard a great deal about how the cultural goals of the current Canadian content system are conceptualized and measured. Mr. Richard Stursberg, who was at the time the President and CEO of the Canadian Television Fund provided a short primer for the Committee on how the funding support system for Canadian television programming works:

> The way people define Canadian television has historically been on the basis of a points system. This is the way the CRTC does it, and this is the way CAVCO ... does it for the purpose of certifying programs for tax credits. ... At the fund to qualify for funding, you must get all 10 points, and moreover, you must hit the other three so-called essential requirements. ...
>
> First, the project must speak to Canadians about Canadian themes and subjects. Second, it must be shot and primarily set in Canada. And third, the underlying rights are significantly and meaningfully developed by Canadians. ...
>
> Industrial Canadian programming is extremely important. It is the programming that in fact, as I say, constitutes two thirds of the total, and is fundamental for keeping actors, writers, cameramen, directors employed and the whole infrastructure of the system working. But the other one-third, the distinctively Canadian, is the programming that is culturally important, in the sense that this is the programming made by and about Canadians for Canadians.[12]

While this might sound straightforward, many witnesses told the Committee that the funding system for Canadian programming has become an exceptionally complicated and bewildering experience. As witnesses explained, the various point systems have, over time, been adjusted, expanded and adumbrated by the various organizations responsible for dispensing funds. The system has been further complicated because a project will not receive support unless it has received prior approval from a broadcaster. That is, a broadcaster has to

true that English Canada has no "star system" like Quebec's. It does, but the stars, if they are popular, finish in a higher financial orbit: not Toronto or Montréal, but Los Angeles.

The first element missing in Canada is risk capital at the level of the United States. And this is probably not an area where government policy can help; writing off nine investments in order that one will be a hit is not a business model that fits well with public accountability. Writing off whole production companies — the ones that don't produce a hit — would also be unacceptable. Subsidy models tend to keep all producers in business at a modest but sustainable level of profit.

The second missing element is — or seems to be — Canadian stories that can be a hit around the world. The CTF is a cultural policy instrument, whose impact is, hopefully, to make Canadians more aware of their own stories and realities. The justification for its substantial funding is that the product will contain "distinctly" Canadian elements, features of plot or setting that make it more relevant to a Canadian experience and consequently, perhaps less relevant to others.

Certainly the American market is seldom receptive to shows that look foreign. And you cannot attract major risk investment to a show that looks unappealing to the U.S. market. The widespread opinion is that, to put the whole package together with Canadian resources, one would need to make what is, in effect, an American program. But even then it is doubtful whether our industry could sustain the level of risk and failure that is part of the American model.

indicate that it will broadcast the proposed program or series. In the language of the industry, project funding is "triggered," as in: "If you get a licence, you … trigger the threshold for the CTF."[36]

Further insights into the complexity of the system can be seen in witness testimony. For example, Mr. Richard Zurawski, President of East West Media in Halifax, told the Committee that even if a producer meets the required Licence Fee Program (LFP) threshold for the CTF, this does not guarantee that Telefilm will agree to provide equity investment (EIP) support. And if the EIP portion is denied, a production will lose its LFP grant unless new funding can be found in short order. He explained:

> The CTF covers the Telefilm envelope. The Telefilm is the equity investment and CTF covers equity and licence. The first round is usually for the licence fee. On this particular round we received 59 out of 59 points. We received the maximum allotted from the CTF, yet we did not qualify [for Telefilm funding] … even though I exceeded the maximum threshold of the broadcaster input — we had APTN as the major broadcaster and we had 23.02% of our financing coming from the broadcaster, which allowed us an excess — we were told we didn't have enough broadcaster support.[37]

Those witnesses interested in making co-productions with international partners voiced similar frustration with the way the CTF and Telefilm manage the funds. As Mr. Michael Snook, Board Member, Saskatchewan Motion Picture Association, told the Committee:

> When the rules were first published, they were very clear and very simple, and they caused me to immediately pick up the phone and call the Canadian Television Fund's office in Toronto and say, I have pending an international documentary, an international treaty co-production, that must travel to seven countries in the world in order to cover its content. One of those countries is Canada, but only about one-tenth of the content can be shot here, because of the subject matter. Under your rules it appears that I will not get the points for Canadian content for shooting in Canada, in fact, I will lose half of the Canadian content points available to me. I'm sure that there were many such calls when those rules first came out. There has been some movement on the part of the Canadian Television Fund to acknowledge the difficulty documentary filmmakers face in making their projects both intellectually accurate and internationally marketable. It is that approach that I would urge be applied to all genres.[38]

Other witnesses pointed to a perverse irony of treaty co-productions (see Chapter 8 for more on co-productions). As Ms. Gretha Rose, President, Cellar Door Productions explained:

> ... to get federal money through the CTF, we have to certify as international coproductions. That allows the broadcaster's licence fee to go against the Canadian portion of the budget only, so it gives us higher points. The higher your points, the more likely you're going to get money from CTF. It's all based on a 59-point structure. So the more work done overseas, the higher your points are and the more likely you are to get Canadian money.[39]

This point was confirmed by Mr. Robert Soucy, Director of the Canadian Audio-Visual Certification Office, who noted "that official treaty co-productions ... are considered Canadian content as well, but they are not necessarily point-bearing."[40] In other words, because Canadian co-productions automatically qualify as Canadian content, many Canadian creators have no choice but to find investors in other countries in order to make their programs, simply because their ideas for a television program do not meet domestic Canadian content criteria.

Speaking to this same point, Mr. François Macerola, who was at the time the Chairman of the Board of Telefilm Canada told the Committee that:

> Since there is such enormous demand, the Canadian Television Fund has used Canadian content to prioritize projects. At the end of the day, the higher the Canadian content, the higher the score. Some producers responded in a somewhat ... Well, I prefer not to say exactly how they responded. They put in Canadian flags and a beaver, rather than ... a lion.[41]

The temptation to add beavers rather than lions to a program was described by more than one witness as leading to unfortunate consequences. For example, Mr. Mark Laing, Chairperson, Directors Guild of Canada told the Committee that "one of the encumbrances that could be removed is the subjective criterion in CanCon regulations, the maple syrup factor. We don't need it."[42]

In short, Canada's creators were clear on several points. They are dealing with a funding system akin to a house of cards, where one funding source that has been awarded can be lost if another source is denied. They are dealing with a set of contradictory definitions that do not necessarily allow creators to create. The are dealing with a mountain of paperwork that requires knowing years in advance who will work on a project. But even this does not scratch the surface of the system's complexity. Witnesses told the Committee that producers sometimes have to line up multiple sources of broadcaster support; they have to harmonize the objectives of the various funds; and, not surprisingly, pay expensive lawyer fees to handle the paperwork.

All of the above complexity is exacerbated by an added consideration — the industrial objectives of Canada's television production support system. Indeed, it is important to remember that the regulations, rules and support mechanisms described in this chapter are designed to support two goals: a cultural goal (to produce Canadian programs) and an industrial goal (to support the development of an industry capable of producing Canadian programs). The juxtaposition of these two goals becomes part of what Mr. Michael Snook termed a "home grown debate." He explained that there is:

> … the notion that this industry is either intensely cultural or intensely industrial, and ne'er the twain shall meet. In fact, the reality is that film and television programming is made by large collaborative groups of people who work in teams — it is an industry. You cannot make a movie sitting in a garret with a pen and a pencil. You particularly cannot participate in today's technological world of the Internet, the web, high-definition television, direct-to-home television satellite distribution without being highly technical, including at the level of content producers, which is what our members are; they make content. Without a sense that our industry is both cultural and industrial at the same time, it's difficult to make clear policy that nurtures the industry on a national or provincial level. If we are told, as makers of content, that our mandate and the mandate of those who would support our development is purely cultural, we run into problems on the business side."

Mr. Richard Stursberg also acknowledged the importance of the industry and noted the importance of making sure that the rules created by the CRTC and the CTF (and by implication other government departments and agencies) are workable:

> It is a fundamental question how we make sure we get these two things in sync. I don't want you to misunderstand me on this. I think industrial Canadian programming is extremely important; it has to be done. Distinctively Canadian programming is also extremely important, but the trick is to try to make sure the fit we get between

> what the [CRTC] makes by way of rules and the rules that are made at the [F]und makes sense for the system as a whole in both cultural and industrial terms.[44]

But the fulfillment of the two goals, whether cultural or industrial, does not always recognize that that the work of Canada's creators must be carried out in a business-like manner. Indeed, witneses told the Committee that, apart from Telefilm's efforts to recoup its equity investment (EIP), there is no explicit provision in any funding mechanism to encourage the development of viable companies. On the contrary, support is project-based and not assessed against the business plan for the company. As Ms. Sonya Jampolsky told the Committee:

> The problem is that none of the organizations are going to give you enough money up front to start paying those bills that are already mounting. Those bills are from the lawyers who have had to review all the contracts that start from the moment of development, from the people who are doing the research, from the people who are filling in the proposals. And so you run into a cash flow problem.[45]

Nor, for example, is there a concerted effort by any agency within the system to market the resulting product. Not even the CRTC, observed Ms. Gretha Rose, requires or expects the promotion of the very programs the system subsidizes. Moreover:

> If some of the [existing] regulations ... that make it impossible for a network to be involved in ... a commercially viable property, one that could be sold into the international marketplace ... were different ..., then would this even be an issue? You can't address one without addressing all the rest of it.
>
> So do I think regulating ratings is the answer? No. But I don't think Heritage Canada coming up with a funding system that's weighted heavily on ratings is the answer inside of this present context either. It's a morass.[46]

When one combines the lack of precision in the goals of the funds with the fact that little or no attention is being paid to the realities of running a business, it can be seen why so many witnesses referred to the Canadian television programming support system as "a mess."

All this being said, there were many others witnesses who highlighted the many success stories of the Canadian programming support system. The

Committee was told, for example, that certain Canadian programs travel very well, particularly documentaries and children's shows. At least two companies that the Committee visited, Nelvana and PixCom, have been very successful in this regard, selling animated children's shows such as *Franklin the Turtle* and *Freddy* to markets outside Canada.

Moreover, as Mr. Michael Snook told the Committee:

> There is no film or television production company in the world, particularly in Canada, that can exist without marketing its intellectual property around the world. Without that, we simply cannot survive economically.[47]

This is why certain categories of Canadian programming, particularly children's, drama and documentaries require different levels of subsidy and why others, such as sports and news require very little, if any. Mr. David Keeble in one of the background papers prepared for the Committee made this point when he noted that:

> … there are parts of the Canadian broadcasting system that are doing well with the current policies, and will continue to do so. Canadian sports, national news, and French entertainment programming will probably continue to succeed with current levels of subsidy, and do not really require exhibition regulation anyway. Since they are popular forms, broadcasters would probably schedule them without any requirement that they do so.[48]

Canadian Content Exhibition Requirements

Another point raised by witnesses is the apparent decline in the availability of distinctively Canadian, English-language dramatic programming. These witnesses were of the view that the CRTC's 1999 television policy has granted Canadian broadcasters so much latitude that Canadian dramatic programming, in particular, is now much harder to find in prime time. Ms. Maureen Parker, Executive Director, Writers Guild of Canada, is representative of those witnesses who spoke on this point:

> In the past three years, the Writers Guild has seen production of identifiably Canadian hour-long drama series fall from a high of 11 series in 1999 to just five series a year for each of the past three years. During this time, production of half-hour dramas has remained flat.

> Long-form documentary has experienced similar pressures. It is increasingly difficult to get point-of-view documentaries — a genre that Canadians pioneered and at which we excel — produced and broadcast.
>
> As dozens of new specialty channels have been introduced and as audiences have fragmented, broadcasters are increasingly resorting to low-budget, magazine-style documentary series for content. A number of factors have contributed to this decline in our dramas and POV documentaries. One important factor was the CRTC's 1999 television policy. While the CRTC's new policy set a prime-time quota of Canadian priority programming of eight hours a week, it expanded its definition of priority programming to include much cheaper genres of programming, such as regional programs and entertainment magazine shows.
>
> The CRTC's new policy failed to set expenditure requirements for conventional broadcasters. This naturally made it attractive to meet Canadian programming requirements by opting for the cheapest form of programming possible. So we've now entered the era of *Popstars*, and *No Boundaries*, which is a reality-based series whose primary function seems to be to sell or market Ford SUVs.[49]

Other witnesses, however, spoke in defence of the CRTC's new policy. Mr. Alain Gourd, Executive Vice-President with Bell Globemedia, noted that:

> [CTV's] strategy is to focus on the success of blockbusters. CTV's approach to priority programming is to invest major resources in drama and documentaries. These are the two genres we're focusing on. CTV uses a simple premise: the more arrows we shoot at this target, the better our aim becomes and the more bull's eyes we hit. The Canadian television policy gives us this opportunity to focus on these genres and is producing impressive early results....
>
> So we not only attracted strong audiences for these productions, whether it's the *Jonathan Wamback [S]tory or the Matthew Shepherd [S]tory*, we also scheduled them across nearly every day of the week in prime time.[50]

To sum up, most witnesses were concerned about the following issues: the confusion between the cultural and industrial funding goals, the bewildering and contradictory nature of Canadian content definitions and the overwhelming bureaucracy that must be negotiated to secure funding support. Finally, witnesses expressed concern with the impact of CRTC's 1999 television policy on the exhibition of Canadian programming.

With the above considerations in mind, the next section makes a series of recommendations that the Committee believes will help bring clarity to and remedy the excessively complicated funding support system for the production of Canadian content television programming.

G. Proposed Solutions

Witnesses who talked to the Committee about Canadian programming raised a number of points that require consideration. These include: the confused state of the current policies, the point system, the complexity of the funding process, the management and governance of the funds, and the appropriateness of the CRTC's 1999 television policy on priority programming.

Programming Policy

It is clear from the preceding discussion that the current system is more a result of evolution than design. As pointed out in the first section of this chapter, the initial emphasis on direct funding of a public broadcaster and regulation has, over time, grown into a system that supports an independent production sector to produce high quality French and English-language programs, and a set of regulations to ensure the exhibition of these programs.

From the data presented in Chapter 4, one can say that these programs have been very successful. The programs watched by French-speaking Canadians are predominately Canadian. Even in the difficult and competitive environment of the past 10 years there has been a substantial increase in the availability of English-language Canadian drama and an increase in the audiences for these programs.

As witnesses pointed out, children's programming in French and English is a deserved success story. About 50% of the children's programming watched by French-speaking Canadians in 2001-02 was Canadian-made, while 40% of the English-language children's programming watched by English-speaking Canadians was made in Canada.

That said, while there have been some successes, witnesses raised a number of troubling points about the current policies guiding the creation, production and exhibition of Canadian television programs. For example, witnesses were concerned that the various policies are not coherent and when taken as a whole are a "morass." In support of these claims, convincing examples of a policy environment where the support programs, content rules and exhibition requirements do not always make a great deal of sense were presented. This is why the Committee is convinced that witness concerns on these points are justified and that action must be taken. Accordingly:

RECOMMENDATION 5.1:[31]

The Committee recommends that the appropriate department develop a comprehensive and integrated Canadian programming policy and strategy that:

(a) establishes clear goals for the programs that support the creation, production, distribution and viewing of Canadian television programming;

(b) includes a clear statement of the cultural objectives, realistic estimates of the cost of meeting these objectives and a comprehensive set of performance measures;

(c) simplifies the process to obtain funding so that broadcasters and producers can focus on creation; and

(d) includes a strong emphasis on measures to ensure that Canadian programming is viewed by Canadian audiences and that it includes appropriate support incentives and performance measures.

Defining Canadian Content

Witnesses who appeared before the Committee were of two minds about the point system. Most could see that it had originated as part of an honest effort to support Canadian stories. That said, many of the producers and directors who work with the system were critical of the system's various components, particularly the contradictory nature of the requirements, its inapplicability to various genres, the arbitrary nature of subjective decisions made by officials, the paper burden and the sense that the point system and federal support measures did not support the efficient development of projects.

The point system was originally a checklist of objective indicators that allowed officials to decide whether a project qualified for a tax credit. As one of the background studies prepared for the Committee notes, Canadian content rules are supposed to be a "procedural definition, indicating the nationality of the creative workers, not a substantive one."[52] However, it is apparent that the system has not only become an arbiter of what is, or is not, "distinctively Canadian" (and what is, or is not, worthy), but an unwieldy support structure unparalleled in any other Canadian cultural program.

Looking over a longer historical period it can be seen that problems with the current system began with the gradual shift toward the notion of "distinctively Canadian" and the belief that such a concept could be determined by a point system and subjective criteria administered by various departmental and agency officials. Why this happened may have more to do with inadvertence rather than conscious design; it is likely that the system simply accumulated small contradictions over time, many of which were introduced to encourage the development of the sector or to correct past shortfalls.

What is not clear, however, is whether those involved realized how fundamentally they were shifting the ground. For example, the existing rules now limit the pursuit of particular representations or genres. Consider the CTF's 2001-02 rules for the storyline of children's and youth programs:

> In the case of programs targeted to children aged six and under, projects set in non-specific non-identifiable imaginary universes will qualify for these points. … Settings in imaginary places that can be identified, such as a particular foreign city, are not eligible for these points.[53]

While these rules were surely conceived with the best intentions, their drawbacks are easily exposed when applied to science fiction. Science fiction is a genre that typically deals with advanced technologies and transgalactic or globalized cultures that are not specific to a time or place. *Star Trek*, for example, deals with the exploration of space in the 23rd and

24th centuries. The various spacecraft have crewmembers from Earth as well as many other imagined planets (e.g., Mr. Spock from Vulcan; Mr. Worf, a Klingon). It would be difficult to imagine, therefore, how these series could have been made "distinctively" (and consistently) Canadian through the insertion of beavers, mountains or a Canadian skyline.

Another way to think about the existing Canadian content point system is to consider how it would apply to some of the great films of the twentieth century. Some films are about a very particular time and place. Most people, for example, would agree that *The Maltese Falcon*, *The Four Hundred Blows*, *Battleship Potemkin*, *The Seven Samurai* and *Mon Oncle Antoine* are, respectively, distinctly American, French, Russian, Japanese and Canadian.

In stark contrast, it is much more difficult to situate *Lawrence of Arabia*, *Schindler's List*, *The Seventh Seal*, or *Metropolis*. While their directors were, respectively, British, American, Swedish and German, few would argue that these films are "distinctively" about a particular country or that they reflect the citizens of a particular country to themselves.

Lawrence of Arabia is as much about the desert and war as it is about Lawrence. Very little is set in England and those who have seen the film remember the desert scene where a speck appears on the horizon and is slowly revealed as a lone man riding a camel. Steven Spielberg's *Schindler's List*, although set in Poland, Czechoslovakia and Israel, is not about those countries or their citizens, but resisting evil. Ingmar Bergman's *The Seventh Seal* has the Knight returning from the crusades and Death as its central characters; it might be set in thirteenth century Europe, but it is not set in a particular country and the characters have no particular nationality. Fritz Lang's *Metropolis* might have been made in Germany, but it is science fiction about technological progress run amok in a city filled with human despair.

While these films are specific to a time and place, they are not about particular countries, but about individuals who are outside a given society. Although Lawrence is British, he is outside England; Schindler is a conman acting against the Nazis, and no one would think it important to mention that he is a native of Czechoslovakia. The Knight in the *Seventh Seal* and the hero of *Metropolis* are without nationality.

If we apply the existing Canadian point system to these films, however, none would have qualified for full funding support.[14] At best, they might have received indirect support under a looser set of rules (e.g., 6 out of 10 points) that apply to what is described as an "industrial production." But no average citizen would ever use such an expression to describe these films. As Ms. Gretha Rose told the Committee: "When it comes to the criteria you have to meet in the CTF for content, if I am doing some of the great Shakespearean works, I'm disqualified."[55]

Further light can be shed on how peculiar the point system for Canadian content production has become by looking at the criteria used to support talented Canadians in other disciplines. No point system, for example, is used to decide on support to writers who publish poems, novels, plays or in magazines. Quite simply, a Canadian author's work is considered Canadian provided a Canadian-controlled company publishes it. The text does not have to be about Canada, reflect Canada, be distinctively Canadian or even mention Canada.[56]

Similarly, there has never been any attempt to suggest that a sound recording should be "distinctively Canadian." Canadian artists write and record country and western tunes, hip-hop, folk, jazz and classical music without anyone wondering whether it is "distinctively Canadian." In a similar vein, when we award research grants to promising students or researchers, we do not ask that they generate "distinctively Canadian" results or papers. Moreover, unlike television or film, no one expects events staged by The Stratford Festival, The Canadian Opera Company or The Montréal Symphony Orchestra to be "distinctively Canadian" or to represent "our stories" (even though these groups depend on support from the Canada Council for the Arts).

Figure 5.10 compares various types of federal support programs for creators. The most striking point about this figure is that all of these support programs, except those for television and film, do not involve concepts such as "distinctively Canadian" nor do they involve a recapture of equity. The imposition of "distinctively Canadian" criteria has led to a third peculiarity: to decide that something is "distinctively Canadian" means that a determination must be made by officials. This is surprising since the Government of Canada has always gone to great lengths to make sure that officials are not involved in making decisions about what is worthy. In other funding agencies (e.g., the Canada Council, the Social Sciences and Humanities Research Council, the Natural Sciences and Engineering Research Council and the Medical Research Council) decisions about whom to fund or what to fund are made by juries of peers and not by officials. Officials administer the process but they do not make the decisions. Television and theatrical films are the only exceptions to this longstanding practice.

Figure 5.10 Government of Canada rules for federal funding support

Profession	Do officials decide if it is "distinctly Canadian?"	Equity recoupment?
Athletes	No	No
Research and development	No	No
Visual artists	No	No
Poetry, plays, novels, music	No	No
Audio-visual, film	Yes	Yes

The idea that there should be equity recoupment is also at odds with other federal government support programs. Support programs for book and magazine publishers are designed, in part, to improve the economic viability of the book and magazine industry. If book or magazine publishers make a profit at the end of the financial year they are not expected to return part of the profit to the government. By extension, given the rate of return for television programming in those categories that need subsidy (e.g., children's, documentaries, drama) is so marginal, why is there an equity investment program to recoup money?

The question would not need to be asked if the program recouped a large percentage on the amounts invested, but it does not. According to a recent study, the equity investment program recoups between 10% and 12% of the money invested. As the authors of the study point out:

> Currently, EIP recoupment averages between 10-12% of annual EIP funding. This is a very low figure for a program that, in theory, is supposed to generate at least some money to reinvest into the industry. This low rate leads us to believe that the recoupment process is artificial and is used to justify the funding of projects that are judged culturally or artistically worthy, but are not necessarily ever going to be profitable.

Why, then, do we make a distinction for Canadian television programs that we do not make for songs, poetry, printed stories, research or athletic achievement? And why is television, along with film, the exception?

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There are at least four possible reasons. First, it is very expensive to make a high-quality dramatic film or television series, therefore, there is a natural desire to keep as much of the investment in Canada as is reasonably possible. Second, it is undeniable that "our stories" are important and that they need to be told, in part, for public interest reasons recognized as early as Aird, and in part because it would be an odd country if our stories were not told. Third, it may be that television drama has acquired a form of cultural significance that does not apply to other creative fields because it reaches a much larger audience. And fourth, drama, historically, receives the greatest number of viewing hours of any genre by a large margin.

While the logic underlying the above reasons may seem understandable, it does not help explain why we reward "distinctively Canadian" stories, rather than stories told by Canadians, for Canadians. Consider, for example, the film based on Farley Mowat's book, *Never Cry Wolf*. Although based on a book by a successful Canadian author, this film is not considered "Canadian content" by any existing federal measure. Similarly, Michael Ondaatje's, *The English Patient*, an internationally successful novel and film, does not qualify as Canadian even though it is a Canadian story, has many visibly Canadian elements and, as a film, won nine Academy Awards.

In short, the rules governing what is or is not Canadian have become so complex that they defy easy description or explanation. They are contradictory, produce absurd results and do not make creative sense. This helps explains why so many witnesses used words such as "absurd", "topsy turvy" and "a mess" to describe the current Canadian content points system.

Accordingly, the Committee is of the view that the existing point system that drives certification of a Canadian production now encourages, albeit in an indirect way, an economically unviable approach to the creation of some Canadian television shows. Furthermore, the notion of "industrial production" as opposed to "distinctively Canadian" only serves to perpetuate this confusion. The use of the word "industrial" in television is a pejorative expression, designed to convey the impression that an "industrial" Canadian production is somehow less worthy than a "distinctively Canadian" production.

The Committee also believes that the various definitions of Canadian content that are now used by our broadcasting system's decision makers need to be rethought. The Committee heard an abundance of evidence from witnesses across Canada that the existing bureaucracy too often prevents our creators from creating.

The Committee believes that the system would be easier for all if the definitions of "Canadian content" assumed that a production made by Canadians is Canadian. Furthermore, the Committee is of the view that greater flexibility would be achieved if differences among programming genres were recognized. To illustrate, the type and number of creative people typically vary from one type of production to the next and are not always applicable, or required, for certain categories; as such, a rigid set of criteria is unworkable. Moreover, based on information provided to the Committee, while 89.7% of 1,073 CAVCO certified productions in the drama category in 2001 were based on 10 points, only 5.4% of 1,860 documentaries were based on 10 points. Clearly, a level playing field is required.

With this in mind:

RECOMMENDATION 5.2:

The Committee recommends that the existing point system for the certification, funding and production of Canadian television programming be redesigned to:

(a) recognize important differences among genres (e.g., drama, documentaries and animation);

(b) recognize the nationality of the authors, directors, performers and technicians;

(c) focus on the achievement of cultural objectives;

(d) ensure that Canadian content reaches its audiences.

In addition:

Canadian Content in the 21st Century

About a year after the Standing Committee on Canadian Heritage began its study of the Canadian broadcasting system, the Minister of Heritage Canada launched a separate review, entitled *Canadian Content in the 21st Century*, to be chaired by the former head of Telefilm Canada, Mr. François Macerola.

The Committee reviewed the briefs submitted to Mr. Macerola's study in its preparations for this report. These briefs make many of the same points and reflect the same variety of perspectives that were heard by this committee during its hearings on the Canadian broadcasting system. A handful contend that the system works and should largely be left in place, others propose increasing the number of points required to gain funding, while several others suggest reasons for changing the system as a whole.

There are two reasons given for wholesale change. First, as pointed out by Dr. Christopher Maule, the conditions that led to the creation of the point system and the various rules no longer exist. Second, the system has grown in complexity (both in terms of the rules and the administrative structure) to the point where it does not work very well.

When the system was created there was very little independent production of any kind in Canada. Today, however, Canada has a healthy independent production sector that is increasingly competitive internationally (particularly in the areas of documentaries and children's stories). While this need to be competitive internationally is acknowledged by many (in both studies), others note that the system of rules has become more complex rather than less complex, more rigid rather than less rigid, and, as a result, very difficult to work with. As Dr. Maule argues in his brief:

> Canadian content rules were introduced at a time when conditions facing Canadian film and television production and the Canadian broadcasting system were markedly different from those that exist today. Over time their administration has required more and more qualifications and interpretation to take into account determination of what constituted Canadian content; the importance of expenditures as a determining factor; how the rules should be applied to different program genres; how they should apply to different time periods; how international coproductions and coventures should be treated; how the policy interacted with other policies such as subsidies, public broadcasting and foreign ownership restrictions; and how the measures might be viewed in international trade agreements. The policy now lacks transparency, causes trade frictions and has limited effectiveness as far as viewing is concerned."

Similarly, another submission described the content rules as they have evolved within the Television Fund as follows: "… the fund has been socially engineered to the hilt. The result is an unwieldy, frustrating labyrinthine national funding system. … The CTF's problems do not stem from bad intentions. … In an attempt to be all things to all people — fair, inclusive, objective, responsive — it has overcompensated and lost its bearings."

In short, the briefs submitted to the Macerola study on Canadian Content echoed precisely what the Standing Committee heard. There were no surprising suggestions or proposed solutions, nor was there common agreement on an easy solution

RECOMMENDATION 5.3:

To achieve consistency and coherence, the Committee recommends that decisions about Canadian content be made by a centralized body mandated to administer Canadian content certification.

Such a system would involve placing more trust in creators and would allow Canada's creators to do what they do best — create. As this committee pointed out in its 1999 cultural policy report, *A Sense of Place, A Sense of Being*: "The Government of Canada cannot create a work of art but it can do much to encourage the creators and visionaries who will give Canada the gift of a living culture to enjoy, preserve and share with the world."

Furthermore, as this chapter has revealed, the existing policy model has had only modest success in increasing viewing to English Canadian drama. Regulation can ensure that Canadian drama is available; subsidy can ensure that it is produced and even promoted to some degree, but unless there are major changes it will be very difficult to increase viewing significantly. As such, an absolute requirement is a vastly improved measurement system for determining how and when Canadian programs are being watched. For this reason:

RECOMMENDATION 5.4:

The Committee recommends that a distinctive identifier be assigned to each Canadian program to facilitate tracking of investment, promotion, and eventual measurements of effectiveness (e.g., audience levels).

Tax Credits and Direct Funding

Tax Credits

The main problems with the tax credit system that witnesses raised had to do with the definitions of Canadian content and the way in which funding criteria and provincial tax credits have been stacked on top of the federal system. There was general agreement, however, that the tax credit system in its current form is an important form of support for the production of Canadian television programming. One of its most attractive features is the fact that it is completely objective. If the tax credit system could be made more flexible (e.g., by recognizing important differences among genre) the Committee believes it could become an even more effective instrument to support the production of Canadian content. For this reason, the Committee believes that the impact of the current system should be studied. Accordingly:

RECOMMENDATION 5.5:

The Committee recommends that the appropriate department evaluate the existing federal tax credit system that supports Canadian television programming to find means to improve the way support is managed and delivered to Canadian independent producers.

Furthermore:

RECOMMENDATION 5.6:

The Committee recommends that the appropriate department investigate the feasibility of developing a more flexible tax credit system for Canadian television production (e.g., levels of support that increase with more involvement by Canadian creators).

Direct Funding

As this chapter points out on several occasions, the Committee heard a litany of complaints about the ways in which Canadian Television Fund (CTF) and Telefilm interpret and apply their respective mandates. The Committee was also sensitized to the confusion and excessive administrative burden that arises from Telefilm's running of the Equity Investment Program on behalf of the Canadian Television Fund.

Programs produced for television represent more than 60% of the total value of the audiovisual (film and television) industry in Canada. If foreign location shooting is excluded then television represents an even higher portion of the Canadian audiovisual industry. Given the significance of the production of television programs both to cultural goals and related industrial goals (e.g., employment of Canadians) it is surprising that the governance structure of the CTF is as convoluted as it is. Witnesses raised this point in a number of different ways. In particular, they pointed to the long and complicated approval process, conflicting objectives and the composition of the board of the CTF.

An evaluation of the CTF that was issued in 2000 made a number of comments — albeit controversial — about the structure and organization of the CTF. In particular, it suggested that the CTFs governance structure should be simplified and that it should not have to report to its own Board and Telefilm's. The evaluation also pointed out that the objectives of the CTF are not the same as those of Telefilm and that there should be some clarification as to what the CTF is expected to achieve. As an example, competing objectives include the cultural goal of supporting quality programs that will attract larger audiences and increasing regional production. The evaluation concluded:

> The government has not prioritized its objectives. Over time the focus has been on trying to address multiple priorities while supporting the production of distinctively Canadian productions. Whether this has been the result of a need to rationalize the allocation of scarce resources, a recognition that funding can only be justified on cultural grounds, or because the support of distinctively Canadian productions is actually a top priority is not clear.[11]

While it is often the case that programs have conflicting priorities, confusion in the objectives and governance of the CTF is not encouraging. The goal of having high-quality Canadian programs in French and English has always been and will be for the foreseeable future a difficult challenge. In the Committee's view, the various layers of ambiguity and confusion about the goals of the various agencies designed to support achievement of the goals of the *Broadcasting Act* need to be clarified. The Committee is well aware that the CTF is a private/public partnership and that the CTF is not an agent of the Crown. Nevertheless, it is of the view that existing confusions in the mandate and governance of the CTF need to be resolved. Thus:

RECOMMENDATION 5.7:

The Committee recommends that the mandates of the Canadian Television Fund (CTF) and Telefilm Canada be reviewed and refocused to ensure a clear separation of responsibilities and, where necessary, greater synergies in areas where responsibilities must be shared. This review should include suggestions for the governance of the CTF.

Furthermore, for the above recommendations to be effective, considerable changes to the mandate and operation of the CTF and Telefilm will be required. To this end:

RECOMMENDATION 5.8:

The Committee recommends that the Department of Canadian Heritage investigate ways to create greater efficiencies in the administration of the CTF and Telefilm Canada, including the adoption of mechanisms that would allow for a centralized and harmonized application process and a reduced paper burden.

RECOMMENDATION 5.9:

The Committee recommends that the Equity Investment Program (EIP) used for television programming be evaluated to determine the costs and benefits of the current approach.

The Committee also notes that the Canadian Television Fund (CTF), despite its problems, has become a key element in the financing of many Canadian productions. Indeed, Professor Catherine Murray's examination of the Fund concluded that: "Among all financing instruments to promote Canadian production, the CTF is the … most cultural in its objectives."[62] Witnesses often noted, however, that uncertainty over the government's intentions for the CTF discourages planning and investment.

The Committee sees it as imperative that support targeting the funds and community television be stable and not fluctuate annually based on the decisions made by Canada's cable operators. In particular, **to ensure stable funding, the Committee believes that the current CRTC provision that permits a cable company to decide how it will divide its annual contributions to community television and the Canadian programming funds needs to be disentangled** (see Chapter 9).

The Committee is also of the view that a refocused CTF should receive increased and stable funding.

RECOMMENDATION 5.10:

The Committee recommends that the Canadian Television Fund be recognized by the government as an essential component of the Canadian broadcasting system. This recognition must include increased and stable long-term funding. The CRTC should be directed to oblige licensees, with the exception of small cable operators, to contribute to the CTF.

Promoting Canadian Programming and Tracking Results

As noted in Chapters 3 and 4 (and as will be seen in Chapter 12), the digital transition will profoundly alter how we use the broadcasting system to encourage the viewing of Canadian programs. Current regulations encourage the viewing of Canadian content by setting weekly exhibition requirements, including special requirements for the exhibition of "priority programming" in prime time.

It is clear, however, that the transition to digital broadcasting and carriage will increasingly allow viewers to seek out and download individual programs, whether from broadcasters, via a PVR or over the Internet. For this reason, the use of exhibition quotas will have less impact and, by extension, the regulation of prime time exhibition will be less effective and meaningful. Therefore:

RECOMMENDATION 5.11:

The Committee recommends that the government consider establishing specific targets for all of its Canadian content policies and programs and that the appropriate agencies and departments report annually to Parliament on these targets.

Furthermore, recognizing the complexity of the broadcasting environment and the importance of timely reviews of policy and program changes, the Committee is convinced that more timely and thorough assessments of these changes need to be carried out. Accordingly:

RECOMMENDATION 5.12:

The Committee recommends that all changes to existing Canadian content policies and programs be evaluated at two-year intervals.

The CRTC's 1999 Television Policy

A theme that animated much of the witness testimony was grave concern with the perceived consequences of the CRTC's 1999 television policy, particularly its revised notion of priority programming. Indeed, a great many Canadian artists, creators and independent producers are of the view that English-language Canadian television programming is in crisis. Professor Murray echoed this view. She notes :

> The decline in English Canadian television drama series (from 12 to 5, according to ACTRA) signals a crisis, according to the trade press in the summer of 2002."[63]

Furthermore, many witnesses were of the view that distinctively Canadian drama and comedy have been disappearing from Canadian television screens given the greater flexibility that the CRTC's 1999 television policy granted private broadcasters. For example, it was asserted that CRTC policies now make it easier for broadcasters to exhibit Canadian programming in off-peak hours and to fill their schedules with reruns. Moreover, it was suggested that the new priority programming policy now allows broadcasters to sidestep the purchase or production of dramatic shows in favour of less expensive forms of Canadian programming, such as reality television series. According to Ms. Murray's report, "The Fall 2002 schedules for CTV and CanWest Global show just one (Canadian) series each in prime time."[64] She goes on to state:

> The CRTC has resisted calling a review of its recent television policy decision despite widespread criticism. The effect of the policy was very early identified as undercutting demand for high Canadian content production. An apparent reversal in direction, with little or no co-ordination with the other agencies working the field, the decision has had considerable effect."[65]

Running in parallel with these considerations, however, is an absence of data that corroborate witness concerns. As Mr. David Keeble told the Committee in a paper prepared for the Committee:

> … when one looks at viewing statistics, it is not evident that the impact on the system, as seen by the viewer, has been great. Between 1999 and 2001, viewing to Canadian drama has fallen but not dramatically; viewing in the "other" category rose, and music/variety remained steady. It is not clear that the viewer noticed reduced emphasis on Canadian drama.[66]

Similarly, the CRTC is of the view that it is too early to properly evaluate the impact of this policy but that:

> In its renewal decisions, … it would be monitoring and evaluating Canadian priority programming scheduling practices and related audience levels, in order to test whether the goals of the Television Policy were being achieved.[67]

That said, the CRTC has recently commissioned Ms. Trina McQueen to study the state of English-language drama in Canada. One particularly well-publicized submission to Ms. McQueen is from the Canadian Coalition of Audio-Visual Unions (CCAU). The CCAU contends that there are two problems with the CRTC's television policy: first, a growing proportion of priority programming is made up of programming other than drama; and second, broadcasters are relegating such programs to times of the day and year when there are fewer viewers.

The Committee notes that the Coalition's submission to Ms. McQueen is important for two reasons. First, it shows the extent to which Canada's creators are — as a whole — deeply troubled by the impacts that they have felt in the short time since the introduction of CRTC's new television policy. Second, it highlights the need for more complete data on scheduling and exhibition.[68]

The Committee is gravely concerned by what it was told by witnesses about particular elements of the Commission's television policy. The Committee believes that effective policy and regulation is crucial to the overall health of the Canadian broadcasting system. This is why it has concluded that immediate action is required to better understand how the Commission's new policy has affected the production, scheduling and exhibition of Canadian television programming. To this end:

RECOMMENDATION 5.13:

The Committee recommends that the CRTC be directed by order in council to review its 1999 television policy for the exhibition of priority programming in prime time.

H. Conclusion

The challenge of producing high-quality Canadian television programming has been with us since the 1950s. In light of this reality, it is the Committee's view that a clear and well-focused policy for the production and distribution of Canadian television programs such as drama, documentaries and children's programming is essential. Canada has a small market divided into two smaller markets (English and French) and the cost of quality television productions is very high. Given the challenges we face there has been considerable success. For example, as many witnesses told the Committee, French and English language children's programs do well in Canada and around the world.

In the Committee's view, the main challenge will be to focus more coherently on the objectives we set for the broadcasting system and the design of support measures put in place to foster these objectives. Efficient and effective support programs for Canadian television programming are absolutely essential and great care must be taken to ensure that such programs are in place, and that they are properly managed and funded. Although the future will be difficult, the Committee sees no reason why Canadian producers and broadcasters cannot build on existing success and continue to produce television programs Canadians will take pride in and want to watch.

Endnotes

[1] *Report of the Review of the Canadian Television Fund*, Corporate Review Branch, Department of Canadian Heritage, March 2000, p. 42.
[2] Public Notice CRTC 1999-97.
[3] Ibid.
[4] Public Notice CRTC 1999-205.
[5] Public Notice CRTC 1999-97.
[6] Ibid.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] Ibid.
[13] Ibid.
[14] Ibid.
[15] And, interestingly, concern about broadcasting predated concern about the theatre, museums, magazines, film and books.
[16] A brief history of Canadian content policy is presented in Appendix 8.
[17] Board of Broadcast Governors, *Annual Report of the Board of Broadcast Governors*, 30 June 1960, p. 23.
[18] Andrew Stewart and William H.N. Hull, *Canadian Television Policy and the Board of Broadcast Governors 1958-1968*, Edmonton: University of Alberta Press, 1999, p. 35.

[19] Ibid, p. 30-31.

[20] Ibid, p. 41.

[21] Paul Rutherford, *The Making of the Canadian Media* (Toronto: McGraw-Hill, 1978), p. 114.

[22] Meeting of the Standing Committee on Canadian Heritage, 7 May 2002.

[23] Some specialty channels, such as A&E, are carried by Canadian cable and satellite companies, so it may be impractical to sell Canadian rights for shows on these channels.

[24] www.nfb.ca.

[25] These are: Newfoundland & Labrador Film Development Corporation, New Brunswick Film, Nova Scotia Film Development Corporation, Technology PEI, Société de développement des entreprises culturelles, Ontario Media Development Corporation, Manitoba Film & Sound, Saskatchewan Film & Video Development Corporation, Alberta Film, North West Territories Film Commission, British Columbia Film, and Yukon Film Commission.

[26] For the uninitiated, Maurice, Jean and Gaétan; Yvon, Dominique and Jean.

[27] Report of the Royal Commission on Broadcasting (Fowler Commission) (Ottawa: Queen's Printer, 1957), p. 66.

[28] CTF figures for 2001-2002 cited on p. 40 of *More Money Blues*, by Dr. Catherine Murray. *More Money Blues: Review of Financial Support for Canadian Television Production*. Paper prepared for the Standing Committee on Canadian Heritage, 31 August 2002.

[29] Alliance/Atlantis has U.S. network television success with its series and spin-off, *CSI*. One must note, however, that the pilot for CSI was produced by Disney, who withdrew from the project, after which it was placed with Alliance by the network, so the risk of the pilot was not borne by the Canadian company.

[30] Meeting of the Standing Committee on Canadian Heritage, 27 November 2001.

[31] All estimates are in U.S. dollars.

[32] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[33] Meeting of the Standing Committee on Canadian Heritage, 19 March 2002.

[34] Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[35] Meeting of the Standing Committee on Canadian Heritage, 27 November 2001.

[36] Sonya Jampolsky, President, Nova Scotia Film & Television Producers Association, Meeting of the Standing Committee on Canadian Heritage, 30 April 2001.

[37] Meeting of the Standing Committee on Canadian Heritage, 30 April 2001.

[38] Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[39] Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[40] Meeting of the Standing Committee on Canadian Heritage, 29 November 2001.

[41] Ibid.

[42] Meeting of the Standing Committee on Canadian Heritage, 30 April 2001.

[43] Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[44] Meeting of the Standing Committee on Canadian Heritage, 29 November 2001.

[45] Meeting of the Standing Committee on Canadian Heritage, 30 April 2001.

[46] Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[47] Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[48] David Keeble, *Canadian Content in the Digital Transition*, Prepared for the Standing Committee on Canadian Heritage, September 2002, p. 9.

[49] Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[50] Meeting of the Standing Committee on Canadian Heritage, 7 May 2002.

[51] The expression "appropriate department" is used in several recommendations in this report. This is because recommendation 19.1 calls on the government to consider the creation of a Department of Communications responsible for support to broadcasting, telecommunications and cultural industries.

[52] Murray, p. 20.

[53] www.canadiantelevisionfund.ca.

[54] The Canada Feature Film Fund (CFFF) created in 2000 supports feature films that score at least 8 out of 10 points on the CAVCO scale with priority to projects with significant creative elements, including Canadian stories, themes, talents and technicians.

[55] Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[56] Two examples help clarify this: (1) If a Canadian visits Kenya and writes an article about Kenyan health care and it is later published in a Canadian magazine, it is considered Canadian editorial content. (2) The writer Rohinton Mistry immigrated to Canada as a young adult and eventually

wrote a novel set in India called *A Fine Balance*. The novel does not describe or mention Canada, yet because it was published by a Canadian-owned publisher it qualifies as a Canadian authored title.

[57] *Report of the Review of the Canadian Television Fund*, p. 104.

[58] Ibid.

[59] Submission to the Review of Canadian Content in Film and Television Productions (*Canadian Content in the 21st Century*), www.pch.gc.ca.

[60] *A Sense of Place, A Sense of Being: The Evolving Role of the Federal Government In Support of Culture in Canada*, Report of the Standing Committee on Canadian Heritage (Ottawa: House of Commons, 1999).

[61] *Report of the Review of the Canadian Television Fund.*

[62] Catherine Murray, *More Money Blues: Review of Financial Support for Canadian Television Production*, Prepared for the Standing Committee on Canadian Heritage, p. 23.

[63] Ibid., p. 6.

[64] Ibid., p. 6.

[65] Ibid, p. 43.

[66] Keeble, p. 10-11.

[67] Canadian Radio-television and Telecommunications Commission, Broadcasting Policy *Monitoring Report* 2002, p. 53.

[68] The CCAU's analysis of program exhibition is based on a sample of three large Canadian broadcasters in the Toronto-Hamilton area and is, at best, an incomplete snapshot of what has been taking place across Canada.

THE STATE OF THE SYSTEM

Chapter 6

The National Public Broadcaster

> **... broadcasting is becoming more and more a public service and in view of its ... importance as a medium ... it appears to us reasonable that a proportion of the expenses of the system should be met out of public funds.**
>
> *Royal Commission on Radio Broadcasting, 1929*
>
> **It [is] the duty of Parliament to safeguard [broadcasting] in such a way that its fullest benefits may be assured to the people as a whole.**
>
> *Prime Minister R.B. Bennett, 1932*
>
> **Broadcasting ... is the most powerful means by which modern nations and peoples share a common experience, learn about their national identity, learn about their culture, learn about themselves.**
>
> *A.W. Johnson, CBC President, cited in Federal Cultural Policy Review Committee, 1982*
>
> **Parliament created the CBC, the National Film Board and Telefilm to give Canadians a stronger voice in their own country. Since then, the world around us has changed significantly, but this basic public purpose remains.**
>
> *Making our Voices Heard: Canadian Broadcasting and Film forthe 21st Century, 1996*

The notion of a national public broadcaster to protect the public interest in Canadian broadcasting is hardly new. As explained in Chapter 2, Parliament's concern for the public and national interest in broadcasting runs through more than 70 years of broadcast policy development. This is reflected in the most recent *Broadcasting Act* of 1991 when it states that our system "provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty."

In parallel with this well-established desire to protect the public interest in broadcasting has been a consistent recognition that a national public broadcaster should serve to inform, educate and entertain the people. This is why a Canadian public broadcaster was created in 1932 and why every review of Canadian broadcasting since that time has stressed the need for a strong public broadcaster.

This chapter discusses the state of Canada's national public broadcaster and its future. Part A reviews international perspectives on public broadcasting. Part B discusses what the Committee heard about the Canadian Broadcasting Corporation. And, Part C considers the challenge of resituating public broadcasting in an era of everincreasing choice.

A. International Perspectives

Over time, many countries — particularly Western democracies — have developed similar ideals for public broadcasting. In the United Kingdom, for example, the mandate of the British Broadcasting Corporation (BBC) has always been to educate, inform and entertain. In the United States, the Public Broadcasting System (PBS) has at its core the fundamental importance of informing and educating. Similarly, Germany's *Arbeitsge-meinschaft der Offentlich-rechtlichen Rundfunkanstalten des Bundersrepublik Deutschland* (ARD) and *Zweites Deutsches Fernsehen* (ZDF) networks have always focused on news and high quality entertainment. And, in Australia, the Charter for the Australian Broadcasting Corporation (ABC) stipulates that the Corporation should "contribute to a sense of national identity and inform and entertain" and broadcast programs of "an educational nature."[1]

Beyond similarities in mandate, however, it quickly becomes difficult to compare various public broadcasters. Probably the most important reasons have to do with different governance structures, funding arrangements, languages and competitive environments. Furthermore, conventional definitions of public broadcasting (e.g., "major generalist broadcasters with significant public funding"[2]) tend to exclude smaller not-for-profit or publicly funded specialized services.[3] Indeed, hundreds of millions of dollars are spent each year by federal, provincial and certain Canadian broadcasters that by any reasonable definition should be considered public broadcasting.

Notwithstanding these limitations, observers often try to compare the Canadian Broadcasting Corporation with public broadcasters in other countries, particularly the BBC. But this comparison is unfair. The United

Kingdom is an extremely small, largely unilingual country on set of islands off the coast of Europe.[4] Its European neighbours do not use English for day-to-day broadcasting and it is virtually impossible for over-the-air signals from continental Europe to be received in the United Kingdom (apart from short-wave). Moreover, the BBC receives a licence fee from a population that is more than double that of Canada's to fund its activities.[5]

Compounding these factors is another consideration unique to the Canadian reality. Most public broadcasters were granted monopoly or quasi-monopoly status to prevent the airwaves from being overcrowded with commercial or special interest networks. Canada's public broadcasting pioneers, however, faced an added consideration: more than 80% of Canadians are able to receive over-the-air signals from the United States. In other words, unlike its international counterparts, Canada's national public broadcaster has competed head-to-head since its very inception with the Western world's most successful producer of popular entertainment.

By contrast, the BBC was a monopoly broadcaster until limited deregulation permitted the creation of a private network, ITV, in 1954, and did not face significant channel proliferation until the 1980s. As Peter Humphreys explains: "In a week in 1980 British viewers could choose from 300 hours of television provided by three channels (BBC1, BBC2 and ITV). Today, UK households with multi-channel television can choose from over 40,000 hours provided by over 250 channels."[6] Indeed, the arrival of terrestrial, cable and satellite competition is a phenomenon that all public broadcasters have been forced to accept and address in recent times.

To date, there have been varying responses to the growth of private-sector competition. In many countries, public broadcasters have launched new television services. Here in Canada, the CBC operates two all-news services, one specialty service and two other specialty services in collaboration with private sector partners. In the UK, the BBC has launched new channels (for example: BBC News, BBC Choice, BBC Parliament and a Learning Channel); and, in Germany, ARD and ZDF have launched parliamentary, history and children's services.

The BBC has commissioned a number of studies on how public broadcasters have adapted to change. For example, a study by McKinsey & Company looked at twenty public broadcasters on four continents. Public broadcasters, the report finds, are resituating themselves in three ways: by focusing on distinctiveness over market share (e.g., PBS in the

United States); market share over distinctiveness (e.g., RAI in Italy); or, a balance between market share and distinctiveness (e.g., SATV in South Africa).[7]

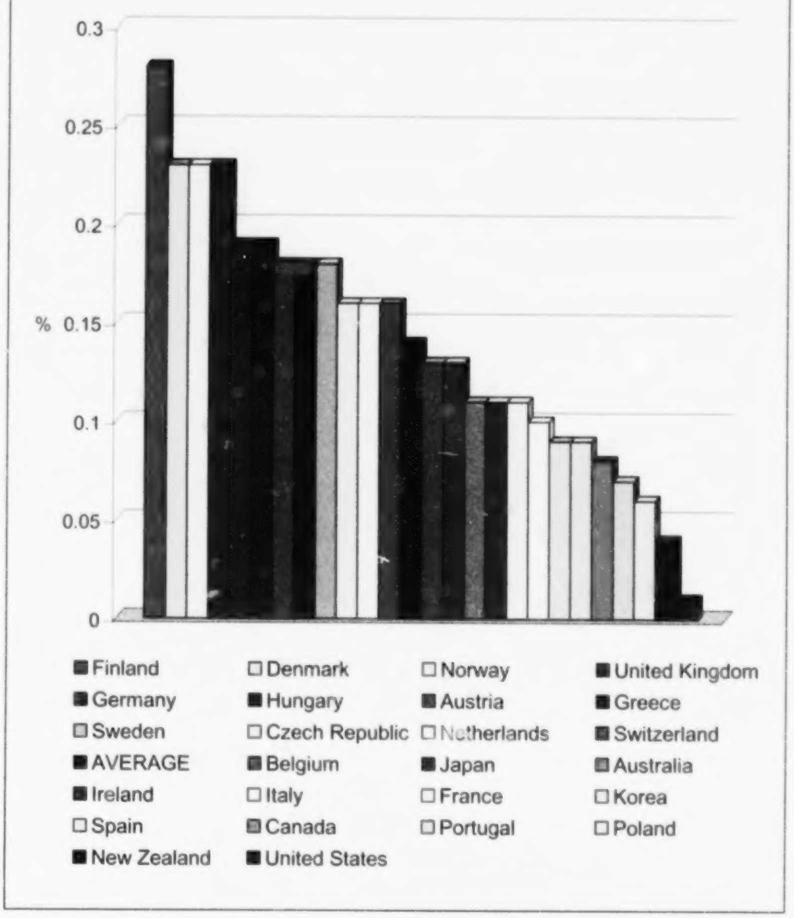
McKinsey also found that public broadcasters have helped "raise the bar" by exerting pressure on private broadcasters to produce certain types of high-quality programs. The authors note, for example, that the BBC production of *Pride and Prejudice* encouraged ITV to make *Moll Flanders*. Similarly, Germany's ARD and ZDF — thanks in large part to their high audience shares — have (perhaps by default) obliged commercial broadcasters to produce higher quality programming to remain competitive.

Finally, and not surprisingly, a close relationship was found between public broadcaster funding levels and sources (i.e., licence fees, government grant, advertising, sponsorships, etc) and the capacity of a public broadcaster to maintain audience share. For example, in contexts where public broadcasters were forced to pursue market share (e.g., Spain and Portugal), it was found that "overall standards of the market" quickly "decend[ed] to the lowest common denominator."[8] Furthermore, in countries where the public broadcaster was obliged to increase its dependence on advertising revenues, "a more populist and less distinctive schedule" was the result.[9]

Figure 6.1 compares public funding for public broadcasting in Canada with other OECD countries. As can be seen, Canada ranked below the OECD average in 1999 — and just above Portugal and Poland — for its spending on national public broadcasting as a percentage of GDP. Conversely, Finland, Denmark, Norway and the United Kingdom placed in the top four with public funding expenditures that were three to four times greater than what is spent in Canada on the CBC.

That said, while these data are useful for comparative purposes, the Committee recognizes that they in no way represent a complete measure of public spending on broadcasting for any of these countries. Within the Canadian context, for example, these data do not include federal and provincial support to Canada's production sector, federal and provincial tax credits, or direct and indirect public funds that support Canada's private, not-for-profit and educational broadcasters. Furthermore, the functions of public broadcasters vary considerably from one context to the next. Some, like the Australian Broadcasting Corporation (ABC), are similar to the CBC, running multiple national TV and radio networks.

Figure 6.1 Public funding for public broadcasters in OECD countries as a % of GDP, 1999



Others, like the United States' Public Broadcasting System (PBS) and National Public Radio (NPR), are less diversified.

While it is no simple task to compare major public broadcasters, it is less difficult to demonstrate why public broadcasters are of continued relevance. As Jeannette Steemers noted in a recent paper:

> Historically [the public broadcaster] was justified on technical grounds (the lack of frequencies), and on the basis of an underlying philosophy grounded on intangible normative values associated with western-style democracy — such as diversity, pluralism,

> universal service, the maintenance of cultural identity, and more recently the promotion of a common culture, which understands and acknowledges different groupings in society rather than simply a belief in a particular way of life. These values also form the basis of argument to extend [public broadcasting] into the era of new technologies.[10]

In other words, as we move further into an era during which all forms of cultural perspectives will be shared easily and willingly between and among nations, public broadcasting may well emerge as an important source for a more focused and distinct expression of particular national cultures and values. With this in mind, the remainder of this chapter discusses the current state and future prospects for Canada's national public broadcaster, the CBC.

B. The Canadian Broadcasting Corporation

Mandate

As noted in Chapter 2, the *Canadian Radio Broadcasting Act* of 1932 created the Canadian Radio Broadcasting Commission, Canada's first public broadcaster and regulator. Less than four years later, in 1936, a new Act replaced the CRBC with the Canadian Broadcasting Corporation (CBC).

Apart from making the CBC more arm's-length in its functioning than its predecessor, the *Canadian Radio Broadcasting Act* of 1936 offered few details concerning Parliament's expectations for Canada's national public broadcasting service. For this reason, between 1936 and 1957 the CBC developed and operated its national English and French language broadcasting services on its own terms.

In 1958, the CBC's regulatory responsibilities were removed following the passage of a new *Broadcasting Act* and the creation of a new regulator, the Board of Broadcast Governors (BBG). The Corporation's mandate, however, remained unclear, with just a short statement noting that the CBC's purpose was to operate a national broadcasting service. This led to regular disagreements between the BBG and the CBC as to the Corporation's place in the Canadian broadcasting system.

Ten years later, upon the passage of the *Broadcasting Act* of 1968, the CBC was given its first mandate, and officially recognized as Canada's national broadcasting service.

The CBC's Mandate According to the Broadcasting Act of 1968

(*g*) the national broadcasting service should

(i) be a balanced service of information, enlightenment and entertainment for people of different ages, interests and tastes covering the whole range of programming in fair proportion,

(*f*) ... be predominantly Canadian in content and character;

(ii) be extended to all parts of Canada, as public funds become available,

(iii) be in English and French, serving the special needs of geographic regions, and actively contributing to the flow and exchange of cultural and regional information and entertainment, and

(iv) contribute to the development of national unity and provide for a continuing expression of Canadian identity.

Twenty-three years later, in 1991, the Act was revised and the Corporation's mandate was amended. Since that time, the Corporation has been expected to: contribute to a shared national consciousness and identity; be available by the most appropriate and efficient means as resources become available; be distinctively Canadian; be of equivalent quality in English and in French; reflect the needs and circumstances of each official language community, including English and French linguistic minorities; reflect the multicultural and multiracial nature of Canada; and, reflect Canada and its regions to national and regional audiences.[11 12]

The CBC's Mandate According to the Broadcasting Act of 1991

(*l*) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

(m) the programming provided by the Corporation should

- (v) be predominantly and distinctively Canadian,
- (vi) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
- (vii) actively contribute to the flow and exchange of cultural expression,
- (viii) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,
- (ix) strive to be of equivalent quality in English and in French,
- (x) contribute to shared national consciousness and identity,
- (xi) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and
- (xii) reflect the multicultural and multiracial nature of Canada.

Since the passage of the 1991 Act, the CBC has faced a broadcasting environment in constant flux. Many new specialty and over-the-air television services have been licenced, audiences have fragmented at a rapid rate, the Internet has gained mass appeal, and, in parallel, the CBC's budget has not kept pace with inflation, but, instead, has been subjected to periodic cuts.

In light of these challenges, the Corporation has at times made some unpopular decisions. Most notably, it no longer delivers the quantity of local news and public affairs programming that it once offered. Furthermore, it no longer produces or purchases the same range of local and regional non-news programming that it could previously afford.

In 2000, the CBC set in motion a corporate transformation strategy to guide its conduct in today's competitive communications environment. In particular, and in light of its public service mandate as articulated in the Act, the Corporation set the following priorities:

- To provide distinctive, high-quality Canadian programming;
- To leverage all available assets to re-invest in and support Canadian programming; and,
- To maximize the use of partnerships and strategic alliances in support of CBC programming goals and initiatives.

The Committee commends the CBC's efforts to reposition itself as a distinctive source for quality Canadian programming that reflects Canada's cultures and values.

Profile of Services

The CBC reports annually to Parliament through the Minister of Canadian Heritage. It operates: four commercial-free radio networks and two television networks that broadcast in English and French from coast to coast to coast. It also offers:

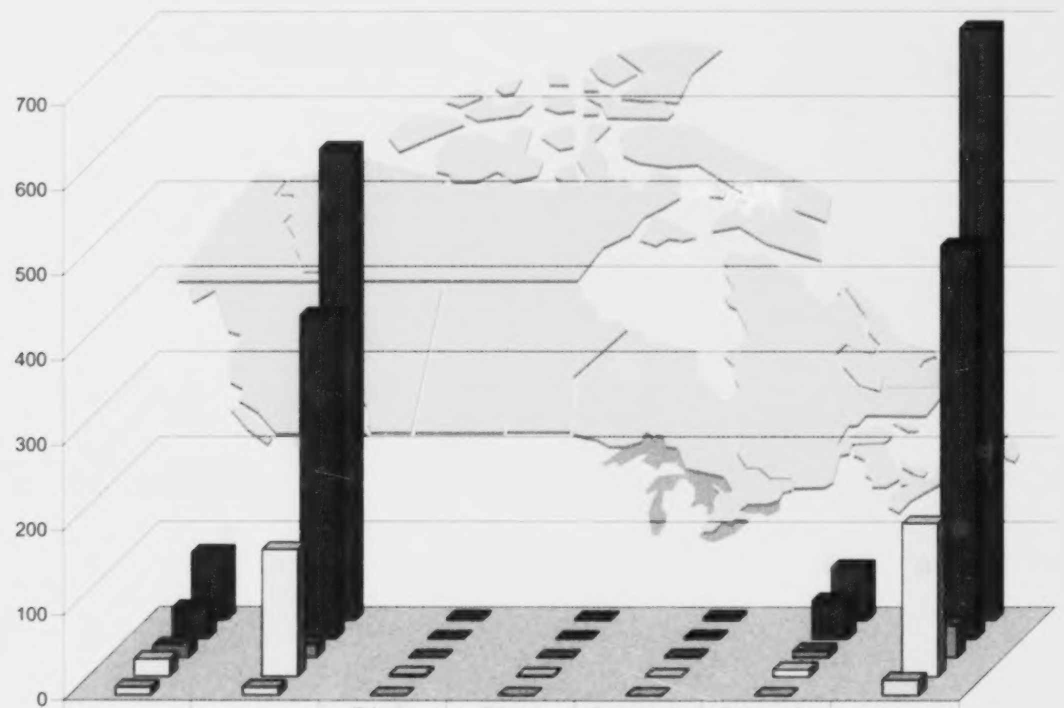
- Radio and television services to northern Canada;
- Two 24-hour news and information television services: CBC Newsworld and the Reseau de l'information;
- Three specialty television services: Country Canada, ARTV and The Canadian Documentary Channel;[11]
- English and French web services;
- Internet-based programming services for English and French youth; and,
- Galaxie, a digital pay audio service offering 30 music channels.

In the sections that follow, selected summary data on CBC radio and television are provided.

Radio

The CBC's English and French radio services provide information, cultural and music programming. These services are available over-the-air on AM, FM, in digital audio (DAB) and via the Internet. Figure 6.2 shows the CBC's English and French radio presence in Canada.

Figure 6.2 Total number of CBC and Radio Canada radio stations, affiliates and rebroadcasters, 2002

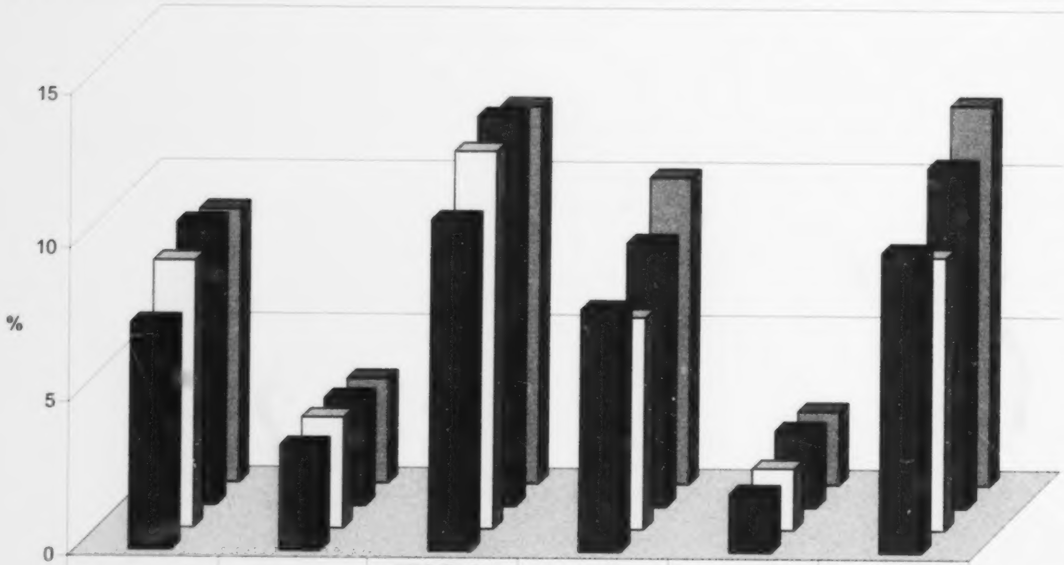


	CBC owned stations	CBC rebroad.	Private affiliated stations	Private affiliated rebroad.	Community owned stations	Community owned rebroad.	Total
☐ Chaîne culturelle	9	9	0	0	0	0	18
☐ Première chaîne	20	149	2	1	0	8	180
▨ Radio Two	14	15	0	0	1	8	38
■ Radio One	36	380	0	0	1	45	462
■ Total	79	553	2	1	2	61	698

Overall, Radio One is available to 98%, while Radio Two is available to 75% of all English-speaking Canadians. As for French radio, the Première chaîne and the Chaîne culturelle are available to 98% and 83% of all French-speaking Canadians, respectively.[14] Table 6.3 shows the audience shares for English and French radio for 1999 through 2002. As can be seen, Radio Canada showed strong growth during this period, while English radio experienced moderate increases.[15]

Overall, the Committee is pleased by the performance of the CBC's English and French radio services. It notes that the CRTC recently granted the Corporation 20 licences to complete its French radio network, La Chaîne Culturelle, and that it has committed to having all of these stations in operation by early 2004. The Committee looks forward to the launch of these new stations.

Figure 6.3 CBC Radio and Radio Canada audience shares, 1999-2002



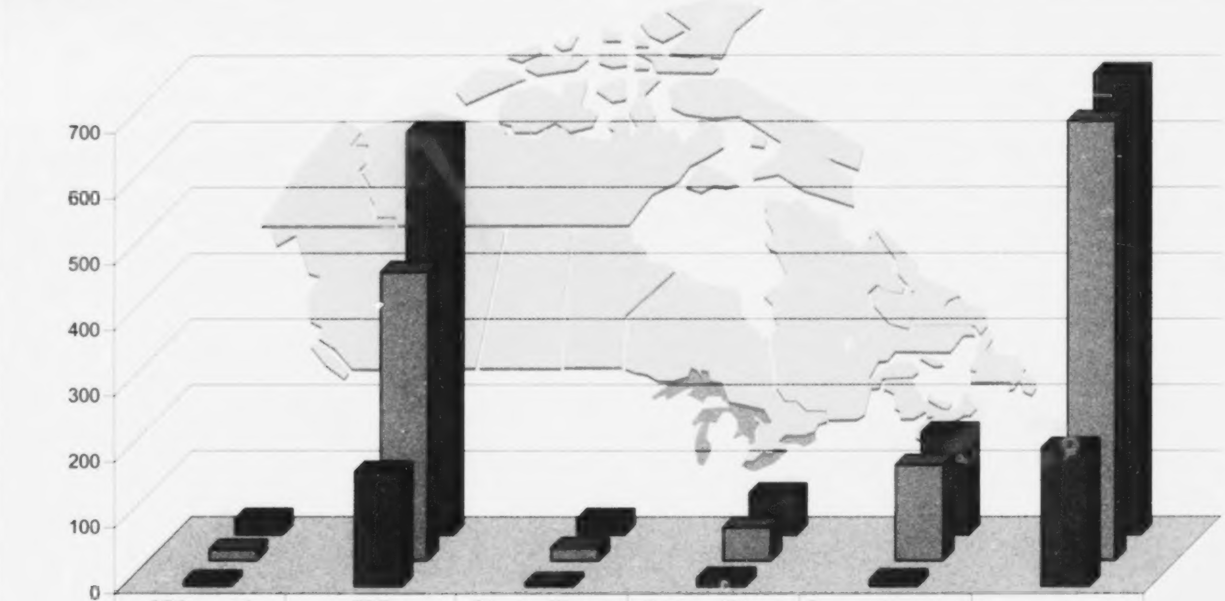
	Radio One	Radio Two	CBC Radio totals	Première chaine	Chaîne culturelle	Radio Canada totals
■ Fall 1999	7.4	3.4	10.8	7.9	1.9	9.8
□ Fall 2000	8.7	3.6	12.3	6.9	2	8.9
■ Fall 2001	9.2	3.5	12.7	8.6	2.5	11.1
▨ Fall 2002	8.9	3.4	12.3	10	2.4	12.4

Television

The CBC's English and French conventional television services are available to Canadians over-the-air, via cable or satellite. Overall, 97% of English speaking Canadians are able to obtain CBC English television and nearly 99% of Canada's French speaking population has access to Radio-Canada.

Figure 6.4 breaks down the CBC's over-the-air stations by ownership. Of particular interest is the fact that the Corporation owns just half of its stations (i.e., 24), while the other half are owned by private affiliates who carry all or part of the CBC's programming schedule.

Figure 6.4 Total number of CBC and Radio Canada television stations, affiliates and rebroadcasters, 2002



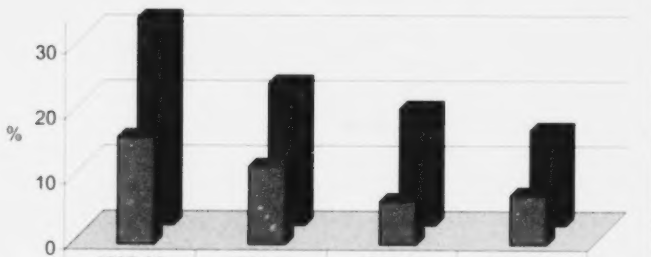
	CBC owned stations	CBC rebroadcasters	Private affiliated stations	Private affiliated rebroadcasters	Community owned rebroadcasters	Total
■ French	8	174	5	13	10	210
▨ English	16	438	19	50	145	668
■ Total	24	612	24	63	155	878

Due to budget cuts, increased competition and audience fragmentation, the CBC's audience share has declined dramatically over the past 20 years.

Figure 6.5 shows that the CBC's English network enjoyed, on average, a 16.4% audience share (between 6:00 a.m. to 2:00 a.m.) in 1985-86, while its French service, Radio-Canada, was being watched by more than 30% of the Quebec television audience.

Figure 6.5 demonstrates vividly the extent to which viewer share for CBC and *Radio-Canada* has declined due to increased channel choice since 1984. Indeed, as was seen in Chapter 4, audience fragmentation is a phenomenon all broadcasters — both public and private, whether Canadian or American — have had to deal with in recent years.

Figure 6.5 Audience shares for CBC (anglophone viewers) and Radio-Canada (francophone viewers), including affiliates, selected years 1985-2002



	1985-86	1990-91	1999-00	2001-02
▨ CBC	16.4	11.9	6.6	7.5
■ Radio-Canada	31.7	21.7	17.8	14.5

What it also reveals is that the overall audience share for CBC's English-language television network — despite being down by more than half from 1985-86 — increased by about 12% between 1999-2000 and 2000-01. This suggests that the CBC's English Television Transformation Project, which launched a new image and schedule for the public broadcaster in fall 2000, is working.

As for French television, it can be seen that Radio-Canada's audience share, which is down about 54% from its 1984 level, may well continue to erode, particularly given the array of newly licenced French-language specialty services that are only now gaining popularity in the Quebec market.[16]

The CBC Radio Revolution

In the late 1960s, Canada, like all the Western democracies, was in a state of social ferment. As the children of the post-war baby boom came of age, their agenda — social justice in all areas of life —forced its way onto the stage. In this atmosphere, CBC English Radio began the long process of self-transformation known as the Information Radio Revolution.

While not clearly articulated at first, the objective of the new journalists at the CBC became clear through action: it was to provide Canadians with the information they needed to be involved in public debate, to transmit the voices of ordinary people and to challenge leaders to account for their actions. In pursuing this agenda, CBC English Radio made itself a cherished institution — as was plainly seen even 30 years later in the national outpouring of emotion at the deaths of the great on-air journalists of the Radio Revolution, Barbara Frum and Peter Gzowski.

The changes started as early as May, 1965, with *Cross Country Checkup*, Canada's first national phone-in show, which allowed listeners to instantaneously hear the opinions of other Canadians from anywhere in the country. By 1968, the spontaneous immediacy of the telephone became the essence of the weekly *As It Happens*, which "phoned-out" to capture live interviews on breaking issues from around the world.

But it was also a local revolution. The "Winnipeg Experiment" created the model for the local CBC morning show, a three hour block that abandoned music for interviews and discussion of the top local issues. And many programs embraced the new approach — get out of the studio using lightweight portable recorders, tape the comments of ordinary Canadians from all walks of life, and present them in the context of the national debate.

But in 1969, much of the radio schedule still consisted of the kind of 15 - minute programs that had been around before television arrived in 1952. To reach its potential, the Radio Revolution needed the focal point it found when the CBC Board commissioned a report from two of their young journalists, Peter Meggs and Doug Ward.

In their report in May, 1970, Meggs-Ward synthesized ideas gathered from their nationwide consultation with radio staff into a set of far-reaching recommendations to make radio relevant. The result: continued change. *As it Happens* went nightly; the local *Information Radio* format was seeded across the country; *This Country in the Morning*, with Peter Gzowski, was created; and the CBC began the process of consolidating information into Radio One and creating an FM network as its performance counterpart.

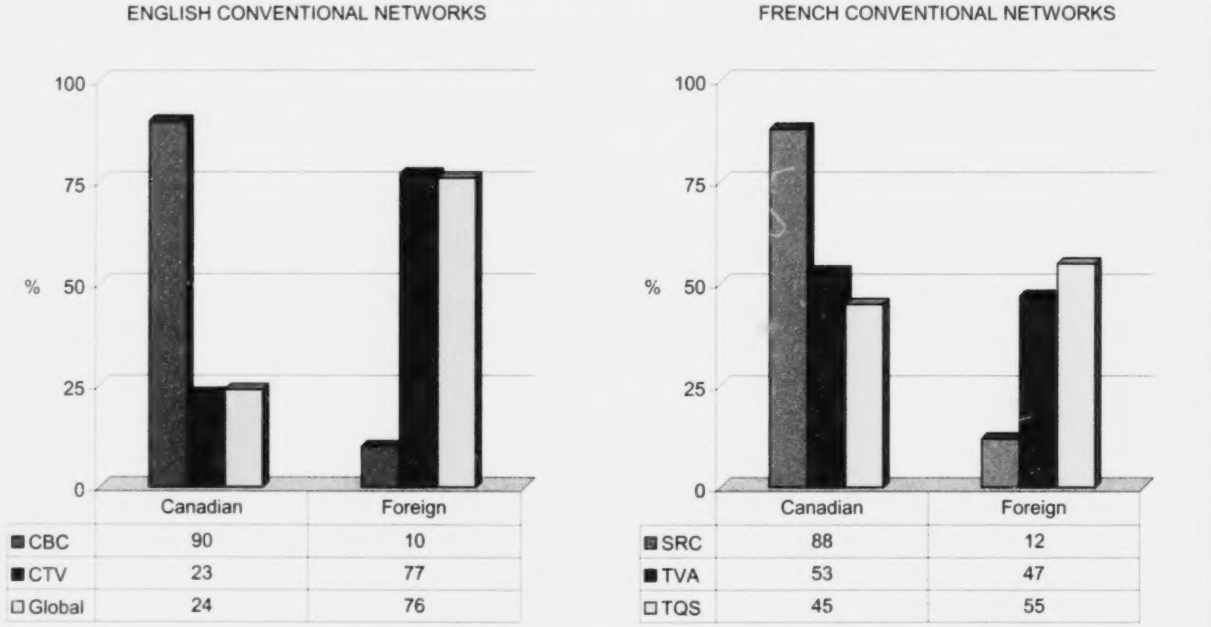
There was, of course, resistance. CBC management rejected a non-commercial policy for radio, but then implemented the measure in 1974. The CRTC rejected

Program Supply and Viewing Data

As noted in Chapter 2, the CBC (radio and television, in English and French) has never had a problem meeting its Canadian content requirements. In fact, its television services regularly exceed CRTC expectations in this regard, and is, by far, the largest single supplier of Canadian programming during prime time.

For example, during peak evening hours from October 2000 to March 2001, 94% of all programming on CBC English television was Canadian (the requirement is 80%). Figure 6.6 shows how well English and French CBC television fared in this regard between September 2000 and August 2001.

Figure 6.6 Canadian content provided during peak viewing hours (7:00 to 11:00 p.m.) by Canada's English and French conventional networks, September 2000 to August 2001



ENGLISH CONVENTIONAL NETWORKS

	Canadian	Foreign
■ CBC	90	10
■ CTV	23	77
□ Global	24	76

FRENCH CONVENTIONAL NETWORKS

	Canadian	Foreign
▨ SRC	88	12
■ TVA	53	47
□ TQS	45	55

A useful way to look at supply of programming data is by comparing it with viewing statistics.[17] Figure 6.7 shows English and French prime time viewing data (in this instance, 7:00 — 11:00 p.m.) for September 2000 through August 2001. As can be seen, the CBC's English and French conventional networks attract audiences to Canadian programming in prime time at rates that exceed the existing supply. For example, CBC

English television supplied 90% Canadian content in prime time in 2000-01, but 93% of CBC viewing time was to Canadian content. In contrast, Global averaged 24% Canadian content in prime time, but just 11% of Global viewers selected Canadian programming.

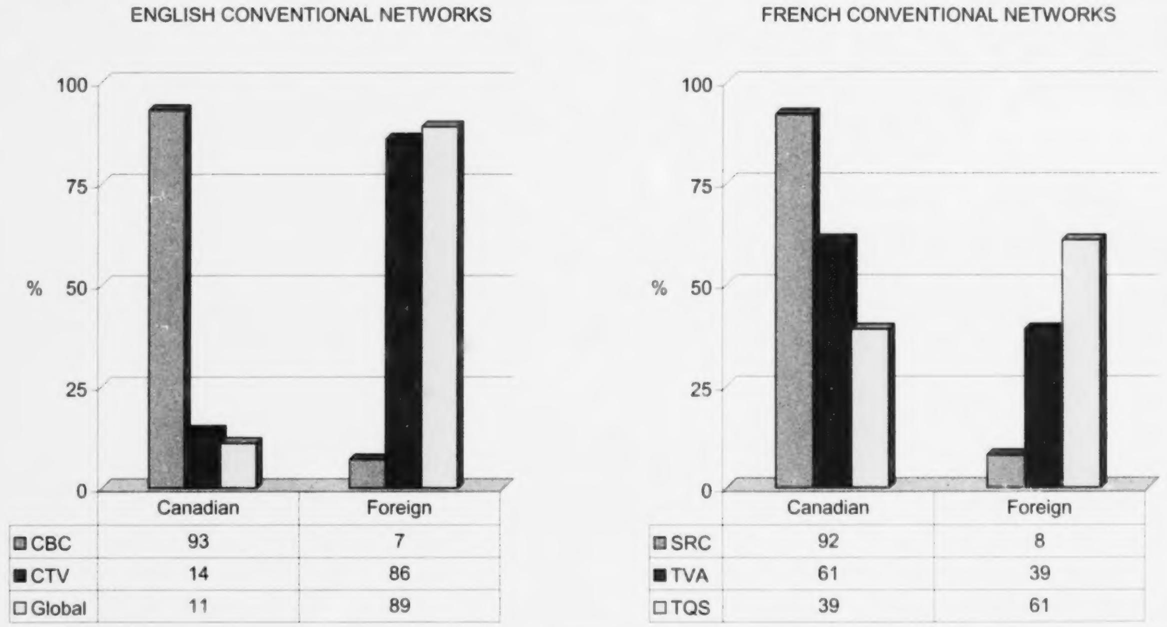
Audience Share

When placed head-to-head with the American programming offered by Canada's conventional private broadcasters, the CBC's English television network is regularly and easily outdrawn.[18] That said, when looked at in isolation, the CBC's average audience numbers for Canadian programming, while much smaller than French television (see figures 6.10 and 6.11), still exceed those obtained by CTV and Global, the CBC's chief over-the-air competitors. Figure 6.8 shows the top 20 English-language, Canadian drama and comedy series that aired in 2001-02. As can be seen, 7 of the top 10 — and 11 of the top 20 — English-language, Canadian drama/comedy series were broadcast on CBC in 2001-02.

the proposal for two networks, but ultimately approved the application for an FM network years later. And management's discomfort with the confrontational approach of the young journalists it had hired also changed over the years — eventually, one of radio's key producers from these years, Mark Starowicz, went on to produce CBC Television's *The Journal* (with Barbara Frum) and the epochal series, *A People's History of Canada*.

Fundamentally, however, the Radio Revolution could be seen from an early stage to be one of broadcasting's successes, recreating CBC Radio, in the television age, as a central meeting place for public debate and cultural exchange in Canada.

Figure 6.7 Canadian content viewed during peak viewing hours (7:00 to 11:00 p.m.) by audiences to Canada's English and French conventional networks, September 2000 to August 2001



	Canadian	Foreign
▨ CBC	93	7
■ CTV	14	86
☐ Global	11	89

	Canadian	Foreign
▨ SRC	92	8
■ TVA	61	39
☐ TQS	39	61

Figure 6.8 Top 20 Canadian English-language drama / comedy series aired by Canadian conventional networks in 2001-02 (excluding Quebec)

Rank	Network	Program	Average audience (thousands)
1	CBC	Royal Canadian Air Farce	997
2	CBC	This Hour Has 22 Minutes	768
3	CBC	Da Vinci's Inquest	738
4	CBC	Red Green Show	730
5	CTV	Degrassi: Next Generation	576
6	CBC	Tom Stone	518
7	CTV	Cold Squad	507
8	CBC	Just For Laughs (Mondays)	467
9	CTV	The Associates	458
10	CBC	Made in Canada	457
11	CBC	Emily of New Moon	449
12	CBC	This Hour Has 22 Minutes (repeat)	399
13	CBC	Royal Canadian Air Farce (repeat)	390
14	CTV	Comedy Now	372
15	CBC	Just For Laughs (Fridays)	358
16	Global	No Boundaries	331
17	Global	Popstars	327
18	Global	Supermodels	230
19	Global	Psi Factor	186
20	Global	Andromeda	170

Figure 6.9 Top 15 Canadian English-language special event programs aired by Canadian conventional networks in 2001-02 (excluding Quebec)

Rank	Network	Program	Average audience (thousands)
1	CBC	Olympics Closing Ceremony	4,601
2	CBC	Olympics Opening Ceremony	2,986
3	CBC	Grey Cup Game 2001	2,390
4	CBC	Olympics Prime Time	2,305
5	CBC	Trudeau	1,879
6	CTV	Tagged: The Johnathan Wamback Story	1,522
7	CBC	Royal Canadian Air Farce: Best of 2001	1,388
8	CTV	Stolen Miracle	1,329
9	CBC	Random Passage	1,198
10	CTV	Torso: The Evelyn Dick Story	1,191
11	CBC	Talking to Americans (repeat)	1,155
12	CBC	Royal Canadian Air Farce: Season Premiere	1,112
13	CBC	Royal Canadian Air Farce: Season Finale	995
14	CBC	Just For Laughs New Years	992
15	CBC	Red Green New Years	951

Figure 6.9 shows the top English-language, Canadian special event programs that aired in 2001-02. Taken together, these audience numbers, while well below average audiences that the CBC (and other networks) once enjoyed in a less fragmented market, reveal that the CBC's English television service remains the leading source for those Canadians seeking

out distinctively Canadian programming, including special event sports programming such as the Olympics.

French television, however, tells a different story. Figure 6.10 shows the top 20 Canadian drama/comedy series that were broadcast on French television in 2001-02. This table shows impressive 2001-02 audience data for Canada's French-language market. Overall, 15 of the top 20 shows averaged more than one million viewers. Furthermore (and despite a potential audience that is about one-third the size of the English market), these top 15 programs enjoyed higher average audience shares than the number one English-language Canadian series, the *Royal Canadian Air Farce*. As for *Radio-Canada's* 2001-02 performance in the French market, 6 of the top 20 Canadian drama/comedy series were aired on SRC, but just one show placed in the top ten. In contrast, TVA, the SRC's main conventional broadcasting competitor, had 13 of the top 20 shows.

Figure 6.10 Top 20 Canadian French-language drama / comedy series aired by Canadian conventional networks in 2001-2002 (Quebec only)

Rank	Network	Program	Average audience (thousands)
1	TVA	Fortier	1,928
2	TVA	Le Retour	1,701
3	TVA	KM/H	1,525
4	SRC	Music Hall	1,521
5	TVA	Les poupées russes	1,464
6	TVA	Tabou	1,444
7	TVA	Histoires des filles	1,394
8	TVA	Cauchemar d'amour	1,393
9	TQS	Lance et compte III	1,263
10	TVA	Tribu.com	1,153
11	TVA	Juste pour rire	1,134
12	SRC	L'Or	1,130
13	SRC	Un gars, une fille	1,101
14	TVA	Emma	1,040
15	SRC	Le dernier chapitre	1,005
16	SRC	La fureur	991
17	TVA	Arcand	989
18	TVA	Si la tendance se maintient	980
19	SRC	La vie, la vie	978
20	TVA	La poule aux oeufs d'or	962

Figure 6.11 shows the top French-language, Canadian special event programs that aired in 2001-02. Taken together, figures 6.10 and 6.11 highlight the fierce competition in the French market between Radio-Canada and TVA for viewers to Canadian entertainment specials. They also show that Radio-Canada, like its English-language counterpart, does very well with its Olympic sports coverage.

Figure 6.11 Top 15 Canadian French-language special event programs aired by Canadian conventional networks in 2001-2002 (Quebec only)

Rank	Network	Program	Ave.audience (thousands)
1	TVA	Les Olivier	2,016
2	TVA	Le Gala Metrostar	1,955
3	TVA	Spécial le retour	1,838
4	TVA	Surprise sur prise	1,689
5	TVA	Le meilleur du festival Juste pour rire	1,686
6	TVA	Spécial KM/H	1,667
7	SRC	JO – Salt Lake : Finale Hockey	1,597
8	TVA	Histoires des filles	1,528
9	TVA	Spécial bloopers	1,419
10	SRC	JO – Salt Lake : Cérémonie de clôture	1,396
11	TVA	Célébration 2002	1,307
12	TVA	Entrée des stars	1,293
13	TVA	Le meilleur de la rentrée	1,273
14	SRC	Beaux dimanche : Le Gala de l'ADISQ	1,217
15	SRC	JO – Salt Lake : Gala des champions (repeat)	1,203

In short, the above figures help make the following points:

- There are strong audiences, in both English and French, for Canadian programming, and CBC/SRC programming in particular.

- On English television, the CBC's Canadian programming is competitive with and often outdraws Canadian programming on CTV and Global; its role therefore appears to be critical in ensuring that Canadian programming reaches Canadian audiences; however, very few of the top Canadian programs (including CBC) are dramatic series.

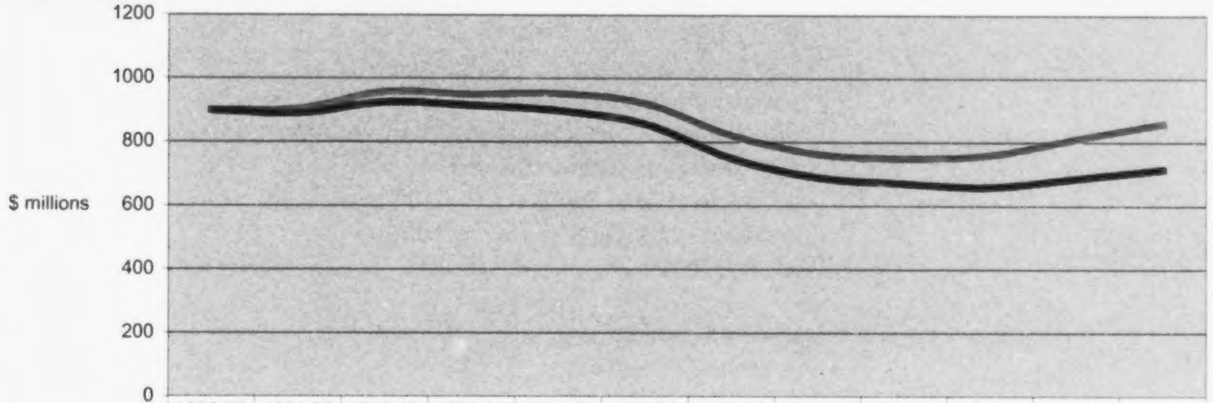
- On French television, audiences for Canadian programming are larger than in English in absolute numbers, but the SRC appears to be less critical to this success (than CBC in English) because of the overall strength of the private sector, particularly TVA.

The Committee is encouraged by the performance of CBC and Radio-Canada and notes that the networks' strong audience shares for Canadian content programming demonstrate the continued relevance and value of public broadcasting in a fragmented media environment.

Revenues and Operating Expenses

Figure 6.12 shows the CBC's parliamentary appropriation in current and constant dollars for the period 1990-91 to 2001-02. As can be seen, the CBC's parliamentary appropriation for operating expenditures (the CBC

Figure 6.12 The CBC's parliamentary appropriation in current and constant dollars, 1990-2002



	1990-91	1991-92	1992-93	1993-94	1994-95	1995-96	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02
$ current	896.3	900.6	954.2	946	948.6	918.2	818.3	759.6	745.5	756.4	807.4	855.6
$ constant	896.3	887.3	921.9	912.2	895.8	854.9	746.6	686.8	667.4	657.2	684.2	712.4

also receives parliamentary appropriations for capital and working capital) peaked at about $950 million in 1992-93. Most of this funding increase was tied to salary and wage increases consistent with the government guidelines at the time for all federal agencies and departments. In fact, it was not until the cuts announced in the 1993 federal budget, and a subsequent Program Review in 1995, that these appropriations began to decrease dramatically. There was, however, a partial reversal in the years 2000-02. Even with the recent year-to-year increases, it can be seen that CBC funding is down over the whole period. The fall in current dollars from 1990-91 to 2001-02 was 4.5 percent; the fall in real dollars over this period was 20.5 percent.[19]

Apart from its parliamentary appropriation, the CBC also generates revenues from advertising, cable subscription fees (for its speciality services) and sales. Figure 6.13 shows CBC revenues for its main channels for the past six fiscal years. This figure shows that the Corporation's parliamentary appropriation is about $100 million less than it was 1996-97.[20] Furthermore, in 2000-01, approximately 60% of all funding (excluding specialty service revenues) came from its parliamentary appropriation.[21]

CBC and the Olympics

CBC's revolutionary continuous-news event Olympic coverage created a fascination that has gripped Canadians ever since.

Well before they opened, the Montréal Olympics of 1976 could be seen to be a formative event. It was the first time that the Games had ever been held in Canada. It was the first Olympics since Munich in 1972, when the assassination of Israeli athletes made it clear that sports no longer lived in privileged isolation. And it was the first Olympics since the launch of Anik made us the first country in the world with a domestic satellite system, promising instant communication to all Canadians, wherever they lived.

Gordon Craig, already a veteran of live coverage from the Olympics in Munich, Mexico City, and Grenoble, decided that this was the moment to pull out all the stops. He persuaded CBC and Radio-Canada management that, as the host broadcaster to the world, they should provide Canadians with wall-to-wall coverage of the Olympics as a live unfolding sports and news event.

I kept saying, "When the Games begin, there's going to be an emotional binge in this country the likes of which we haven't seen since Expo. All of Canada is

going to want to watch what happens. If we don't show them, we won't have fulfilled our mandate as a public broadcaster."

The result was nearly 170 hours of largely live coverage, giving viewers the feeling they were actually attending the Olympics — not just watching the pre-packaged mini-dramas typical of U.S. network coverage. As a nation, we responded: 92% of all Canadians — 18 million people — tuned in to the 15 day event. And just as at Expo 67, we grew as a nation as we watched our athletes struggle and triumph. The revolutionary approach brought Canadians together as never before, and it has remained the standard for Canadian Olympic coverage ever since.

But growth comes through shared adversity as much as through shared success. We stayed awake into the night to watch Ben Johnson win the 100 meter dash in Seoul, Korea, in 1988 — and then watched with sadness nights later as the CBC broke from sports coverage to deal with the news of his positive drug

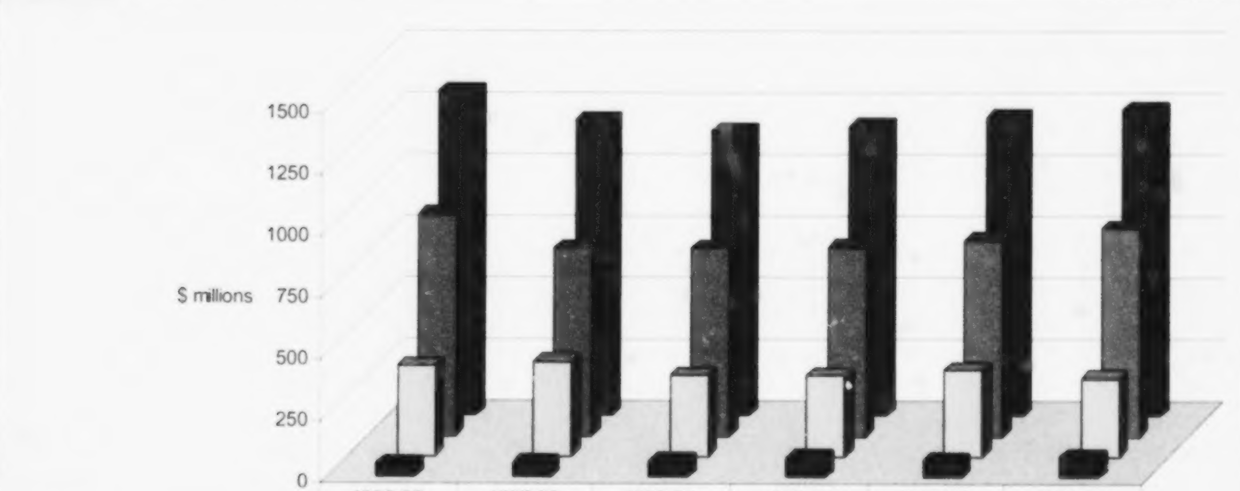
Figures 6.14 breaks down CBC operating expenses for 2001-02, including speciality services. This figure shows that nearly 75% of the CBC's expenses are directed towards the operation of its main networks, while just 1.2% enables it to deliver portions of these and other programming services via new media technologies (i.e., the Internet).[22]

C. What the Committee Heard

As noted in Chapter 2, the CBC has always had to deal with the burden of high expectations and substantive criticism at the slightest misstep. This phenomenon prompted the Task Force on Canadian Broadcasting in 1986 to remark:

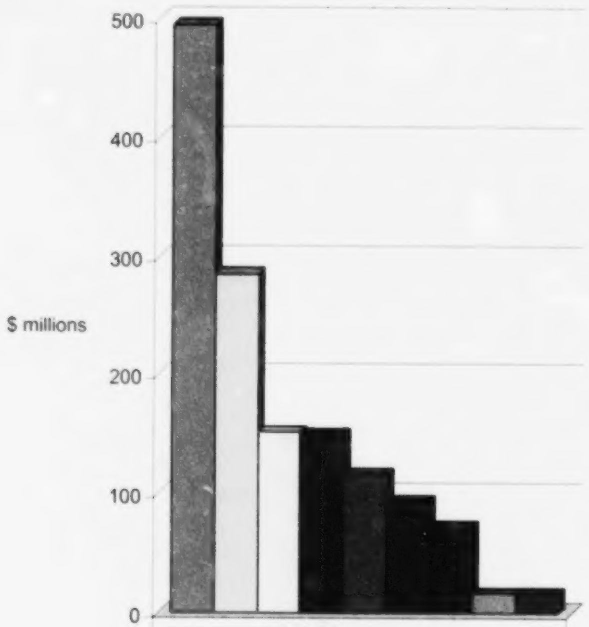
> Over the years, the CBC has become the kind of institution that every Canadian has something to say about. Both its friends and foes feel and speak strongly about the CBC, as we have learned in our public and private meetings across the country.[23]

Figure 6.13 CBC revenues, excluding specialty services, 1996-2002



	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02
■ Miscellaneous	53.7	54.6	63.9	78.8	65.1	82.4
□ Advertising and program sales	364.8	383.3	329.7	328.7	349.2	319.3
▨ Parliamentary appropriation	896.7	759.7	759.5	764.7	794.1	840.4
■ Total	1,315.0	1,197.6	1,153.1	1,172.2	1,208.4	1,242.1

Figure 6.14 CBC operating expenses, 2001-02



	Operating expenses
▨ English television	494.9
☐ French television	284.9
☐ English radio	152.1
■ Amort. of capital	149.3
■ Spec. services / RCI	115.9
■ French radio	93.6
■ Dist. and affiliates	72.6
▨ New media	17.1
■ Corp. management	15.9

Total expenses: $1,396.3 million

Since that time, significant cuts to the CBC's parliamentary appropriation (particularly since the early 1990s), coupled with the Corporation's ongoing struggle to resituate itself in Canada's broadcasting system have merely amplified public scrutiny. In its defence, the Corporation's 1993 Annual Report observed:

test, an event that produced national soul-searching about the meaning of athletics, competition and national pride. Perhaps the outpouring of feeling when Donovan Bailey won the gold medal for the 100 in Atlanta in 1996 — followed quickly by the men's 4x100 relay team — was even greater because it gave some closure to that difficult period.

But for sheer involvement, nothing previous matched the countrywide interest in the fate of Canadian athletes at the 2002 Winter Olympics in Salt Lake City. Partners CBC and TSN presented 400 hours of coverage, with CBC audiences averaging 1.5 million Canadians over two weeks. The gold medal performances by both women's and men's Olympic hockey teams were watched by huge numbers, with the men's gold medal match attracting an all-time high for Canadian viewing, averaging close to 9 million viewers. It's interesting that audiences peaked during the post-game celebration at 10,461,000, as Canadians tuned in to share the experience — celebrating not only their athletes' success but their own sense of national pride.

> The fundamental question for the CBC, with resources contracting, demands increasing and competition intensifying, has been how to maintain our capacity to fulfill our mandate to ensure that Canadians and their collective identity will continue to find a voice.[24]

A year later, the CBC's President added:

> ... we have been able to mitigate some of the corroding effects of budgetary uncertainty, restore a measure of optimism to our work and refocus our efforts on the primary purpose of the CBC — to give Canadians a view of themselves and their country that they cannot get from any other source.[25]

And, most recently, the CBC's current President, Mr. Robert Rabinovitch, declared:

> As Canada's national public broadcaster, CBC/Radio Canada must provide Canadians with high-quality, distinctive Canadian programming ... Our focus is to strengthen our ability to be a more distinct public service broadcaster ... In the context of limited resources and an increasingly competitive environment, the Corporation has set out ... priorities to 1) Demonstrate that CBC/Radio Canada is a well-managed company. ... 2) Ensure distinctive programming of the highest quality. ... 3) Pave the way for a debate on the funding of CBC/Radio Canada ... 4) Ensure the sustainability of our Canadian schedules. ... 5) ... fulfill our mandate through selective alliances and partnerships ... [and] 6) Reinforce the capacity of CBC/Radio Canada to work as one integrated conglomerate.[26]

The above citations expose two core issues that the Committee struggled to unravel and address. These are: (1) the appropriate role, mandate and structure of the CBC and (2) its funding sources.

But making sense of these issues is hardly a straightforward undertaking. Throughout its hearings and travels, the Committee heard a wide range of witness testimony on the strengths and weaknesses of the CBC. Some witnesses were complimentary, while others were critical. Some were concerned with local and regional representation, whereas others were focussed on the delivery of national programming content. Some were worried about reaching minority audiences, while others were concerned with low audience share. Yet, upon close scrutiny, most issues raised by witnesses tended to flow from — or into — the long-standing debate over the CBC's role, mandate and funding structure.

Keeping this in mind, this section reviews what witnesses told the Committee (in person or in written submissions) about the CBC. Notwithstanding extensive overlap in issues and concerns, witness perspectives have been divided into the following categories: general perspectives; local and regional programming; the CBC's role; and, funding considerations.

General Perspectives

When the CBC appeared before the Committee, its Chair, Ms. Carole Taylor stated:

> At a time of unprecedented challenges in broadcasting from diverse technological platforms, from almost unlimited channel choices, it is imperative that we as a country develop policies and initiatives that ensure a space for independent Canadian public broadcasting. I sense a real stirring of pride in our country these days ... Within this context CBC stands as a national institution dedicated to supporting Canadian values, Canadian athletes, Canadian performers and artists, Canadian identity. So, is the CBC still important to Canada? In our view, the CBC is more important today than it ever has been in its history.[27]

Shortly thereafter, the Corporation's President, Mr. Robert Rabinovitch, told the Committee:

> Today, there is a greater need than ever before for a distinctive Canadian voice. There must be a reconfirmation of the CBC's role in the Canadian broadcasting system. The CBC must be provided with the necessary tools and flexibility to fulfill its mandate and properly serve the Canadian broadcasting system and the Canadian public.[28]

The above citations offer useful insight into how the CBC would like to position Canada's national public broadcaster in today's changing environment. What their words exhibit is a dedication to providing a public broadcasting service to all Canadians, for all Canadians — one that has the means and the mandate to transmit and share what it is that makes Canada, and its citizens, unique.

Many witnesses who appeared before the Committee shared this perspective. For example, Mr. Armand Dubois argued that the CBC:

> … is the solid foundation that supports the rest of the structure, and must remain so. … The CBC must remain a resolutely public organization that is independent of government and not defined by profitability criteria.[29]

Voicing similar passion, Mr. Brian Pollard said that:

> Because there is this kind of tremendous cultural divide [across Canada's regions] and nobody has made any attempt to explain the differences between you and me to the rest of the country, this misunderstanding persists. That's why public broadcasting is so essential. We're a community of minorities. We need to have good public broadcasting. It's essential.[30]

The Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique told the Committee that:

> In Quebec, we have often seen how the presence of a high-quality, strong and competitive public television channel has helped to raise the standards of programming offered by the private sector. The evolution in news and drama programming illustrate this dynamic very well.[31]

Remarks such as the above were heard frequently. Indeed, submissions made to the Committee throughout its study underscored regularly the essential role of the CBC and of public broadcasting in general. For example:

> The CBC is … a vital force that has to be maintained.[32]

> We recommend that the Act state that CBC must remain a fundamental and significant presence within the Canadian broadcasting system as it evolves.[33]

> The CBC [is] a fundamental pillar of our cultural heritage …[34]

> … the CBC's mission remains as essential today as when it was created over 60 years ago.[35]

> We consider that the CBC's Canada-wide mandate on issues of interest to all Canadians is essential in ensuring this country's sovereignty.[36]

> CBC … is great. Keep it. Do everything you can to support it. If it weren't for CBC Radio, I guess I probably wouldn't be informed.[37]

> In my opinion CBC is the most important … broadcaster in Canada. There is no part of our society and culture that unites the country the way CBC radio does.[38]

> You could help us by ensuring the CBC remains important to yourselves and all Canadians, and that it will be preserved and strengthened.[39]

Quite naturally, the same passion that fuelled expressions of support for public broadcasting also energized some witnesses to share a wide range of concerns about CBC programming. These included: the decline of local and regional programming; the virtual elimination of in-house production; and, overall program quality. The following is a sampling of what the Committee heard on these three points:

> In the 1960s, 1970s, and 1980s in Newfoundland, the Canadian Broadcasting Corporation was alive and vibrant with activity. Today it is dying, and there are many Newfoundlanders — indeed, many Atlantic Canadians — who feel deeply that the CBC television network in fact is dead.[40]

> CBC finds one program format that is a success and is forced to milk it to death instead of constantly developing new and exciting formats.[41]

> … the CBC must make every effort to offer viewers Canadian programming in areas that tend to be under-represented in the schedules of other Canadian broadcasters, particularly drama, music, children's programming and documentaries. But this must be done in a way that does not provoke viewer flight from public television.[42]

> Documentaries have a natural fit with all public broadcasters, and indeed in a public space that should be increased. However, I want to say that with the CBC currently in terms of documentary, one of the sore points … with us … is, for example, an independent documentary strand called Witness. If you know what's on this

> week, then you're ahead of me, because it's never promoted, and part of that has to do with some of the internal promotion rules.[43]

The Committee also heard much speculation as to the root cause(s) of the issues identified above. Explanations included: weak management; an absence of clear priorities; insufficient funding; problems with governance; and, a lack of accountability. For example:

> The CBC is mired in its bureaucracy.[44]
>
> Certainly in television — I don't know if in radio — CBC has succumbed to every institutional weakness or virus in becoming bloated with middle management. It has been losing inspiration at the top and at the bottom, and it has allowed talent much less access to the dials.[45]
>
> ... since 1990, parliamentary appropriations to the CBC have visibly been shrinking like snow in the sun. This has had a direct impact on jobs, programming and the quality of the advertising carried on our public network.[46]
>
> But therein lies part of the problem ... the management at the CBC and its direction. Is it pulling in the same direction as the one people want it to go in, in terms of regional programming? I'm not certain that just giving the CBC money would see it go in the direction of more local programming. I don't know that this is what it would do with more money.[47]
>
> I don't know if contempt is the right word, but I don't think the CBC cares about its audience a lot. Or maybe the CBC doesn't know who its audience is. ... In terms of the kind of everyday television that people watch, I think CBC is a tremendous waste of resources. I don't think it's a matter of funding. It's a matter of priorities, poor understanding of quality and content.[48]
>
> The tragedy is that somebody, somewhere, who makes the decisions with respect to CBC has written off the regions in the name of the dollar. And it's not working.[49]

In short, perspectives on the CBC were as diverse as they were passionate. The well-known comedian and actor, Mr. Rick Mercer, perhaps summed it up best in a videotaped presentation to the Committee during its visit to the CBC's facilities in Halifax:

> Now, I should tell you ... I love the CBC. — I just want to get that out there in the open — And while we're on the subject ... I hate the CBC. Why? Because I'm Canadian and that's what Canadians do. We love the CBC and we hate the CBC. Why? Because the CBC ... the CBC is like a vegetable. — not the people running the CBC, the CBC itself — Why? Because the CBC is good for us. It's good for us as a nation and it's good for the entire broadcasting system. [...] The fact is ... the CBC sets the bar. Now, yes, occasionally other broadcasters and producers soar over the bar. But the fact is, the CBC sets the bar.[50]

Local and Regional Programming

As the Committee travelled across Canada, it became apparent that feelings run deep — especially outside Toronto and Montréal — whenever the issue of local, regional and national programming is mentioned. In particular, decreases in local CBC programming — which started in the early 1990s — raised many questions concerning the role and mandate of the national public broadcaster.

The Committee notes that the Mandate Review Committee foresaw this dilemma in 1996 when it wrote:

> Some commentators argue that in order to reduce costs, the CBC should become strictly a national network ... We disagree strongly ... Our view is that the CBC will not be able to "contribute to shared national consciousness and identity" if people from various parts of the country do not hear or see themselves on the CBC.[51]

As noted in Chapter 2, the *Broadcasting Act* of 1991 states in Section 3(1)(m) that the Corporation's programming should: "reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions." Nowhere does it state, however, that local audiences should be specifically targeted, nor does it insist that there be particular levels of programming provided at a regional or local level. In short, the CBC's mandate for local and regional audiences is left open for interpretation.

And it is on this basis that Ms. Carole Taylor explained the CBC's regional focus when she appeared before the Committee. She stated:

> Regional is not just doing the local news and local stories, although that is certainly part of it. And on that point, we don't have to compete with the privates, we can offer a different kind of local service. We don't have to do all the ambulance chasing, we don't have to do all of the crime stories that often lead off on privates. ... But underlying every possible civic issue there is something to be discussed and looked at, and I think that's the role CBC public broadcasting should scoop for itself and make sure that if you want a deeper or a different look at those regional or local issues, that's where you'd turn.[52]

Picking up on this same point, Mr. Robert Rabinovitch added:

> ... we must reflect the regions in our national programs. That is why we opened up new news offices and what we call "pocket bureaus" right across the country, so we have more news coming from all areas of the country. That together forms what we call the national newscast. If you look at the newscast, you will see more and more stories that originate in different places than you did in the past. If there's a hospital problem in Toronto, that's one thing, but if there's a hospital problem in Saskatoon, we'd like to show that, too. So I think we have changed dramatically, if you look at the structure of our newscasts.[53]

Seeking clarity, a Committee member asked whether the *Broadcasting Act* should be amended to specify the CBC's role in local programming, to which Mr. Rabinovitch responded:

> I think you have to look at that very carefully, but if you attach the local and not the regional ... I fully accept the [A]ct as it is now. We have a very important regional responsibility to show and to produce in the region, but local, as Carole said, is not the same in terms of local news. We have to think of different ways of doing that. You may want to look at that. It's a responsibility you may not want to give to the public broadcaster.[54]

The English television suppertime news program, *Canada Now*, is the best-known example of the how the CBC has struggled to reinvent its local, regional and national representation in this era of fiscal restraint and intense competition. Committee members saw the show in production in Vancouver (where the national segment is produced) and in Regina (where one the regional editions is programmed and broadcast).

Canada Now strives to blend national, regional and local stories. Using segments provided by CBC journalists from across Canada, thirty minutes of national news is produced and repackaged five times a night for five time zones. Another half-hour segment of regional news is also produced in CBC stations across Canada. In some regions the national component leads and in some regions it is the regional. But, no matter the region, *Canada Now* has failed to attract sizeable audiences.[55] Mr. Robert Rabinovich admits that "[l]ogically, it should work, but logic doesn't determine audience share."[56]

Professor Bruce Wark believes that CBC's repackaged supper hour news not only short-changes the public, but is in contravention of the regional obligations imposed by the *Broadcasting Act* and the Corporation's own licence. He told the Committee:

> The [A]ct states that the programming provided by the corporation should reflect Canada and its regions to national and regional audiences while serving the special needs of those regions. CBC Television now attempts to serve those special needs with a half hour of Nova Scotia news every weekday evening. ... CBC Television is a pale shadow of what it used to be.[57]

Many witnesses also commented on the importance of maintaining local programming. For example, Mr. Brian Staples, told the Committee that there is a lack of focus on local issues at the CBC and that it should have more "participatory television", encouraging informed public dialogues amongst Canadians.[58] The Canadian Media Guild and the Newspaper Guild both argued that the CBC does not have an adequate approach to local programming even though people have a fundamental desire for local content.[59] And, the Music Industry Association of Newfoundland and Labrador's went so far as to say that "[u]nderfunding the CBC is denying th[e] regions a voice and denying the not-so-commercial voices a chance to have their say".[60]

That said, the Committee heard from some citizens who support the Corporation's new programming direction. Ms. Jocelyn A. Millard of Winnipeg, for example, wrote to tell the Committee that she:

> ... firmly believe[s] that the CBC Radio and Television have an important role to play in fostering a sense of nationalism, by informing Canadians from coast to coast to coast of what is happening in other regions of our country. Certainly some regional

> programming is important and necessary, but the truly national aspect needs to be emphasized by a national vehicle as the CBC.[61]

Similarly, a Quebec-based union told the Committee that:

> … the CBC must remain generalist television, not defined by profitability, and independent of the political arm.[62]

And, in Prince Edward Island, Mr. Wes MacAleer, MLA, argued that:

> The principal role played by public broadcasting in Canada is to promote Canada to Canadians, and Canada internationally. The task of the Canadian public broadcaster is multi-dimensional. As a fundamental Canadian institution, the CBC should play a central role in Canadian public life. It has a responsibility to provide a national focus, assisting Canadians to understand themselves and their values.[63]

In fact, in Prince Edward Island, the CBC received a ringing endorsement from all witnesses:

> So, heavens, local radio is fine. … we really feel we are part of Atlantic Canada, particularly part of the Maritimes, and whatever is going on here is of interest.[64]
>
> My impression is that in fact the CBC does a pretty reasonable job of covering what is local.[65]
>
> On Prince Edward Island, public broadcasting can be described in one word: community. The CBC on Prince Edward Island is part of what we call here the "Island way of life".[66]

Aside from its withdrawal from local production, the CBC was also criticized for its closure of in-house production facilities in favour of centralized facilities in Toronto and Montréal. In St. John's the Committee was told by the president of the Newfoundland and Labrador Film Development Corporation that:

> The loss of CBC in-house production activity has had a dramatic impact here. The CBC studio functioned at one point … as an incubator, giving Newfoundlanders and Labradorians an opportunity to pilot projects that could be picked up nationally. This is no longer possible. … everything now is Toronto-centric.[67]

Similar sentiments were heard from other witnesses throughout the Committee's travels. For example, Mr. Georges Arès, president of the Fédération des communautés francophones et acadiennes du *Canada*, told Committee members that the French services of the CBC are excessively Montréal-focused:

> Radio-Montréal, as we sometimes call it in our communities and in certain regions in Quebec, must continue to change in order to better reflect the reality of francophones from the entire country.[68]

Witnesses also raised questions concerning the CBC's commitment to local and regional francophone audiences — especially those living as a minority community. In Prince Edward Island, a representative of the Société Saint-Thomas-d'Aquin, told the Committee that:

> ... to ensure our survival, it is critical that we have access to the communications tools that will help us to better know and appreciate our cultural and social wealth. ... we are happy with the morning show on Radio-Canada, *L'Acadie c'matin*, the only French-language program produced here, at the Charlottetown studio ... it contributes to the blossoming of the Island francophonie.
>
> [But] we feel obliged to reiterate that, with the exception of this program, the product broadcast by the Crown corporation is all too often made by and for Quebeckers. In order that they also reflect Acadian reality, we would like to see greater prominence given to local productions. Quebeckers are often unaware of the existence of other French-speaking populations outside of their province. It would be as much in the interest of Quebeckers as of island Acadians to see and hear more about Acadia on the national network.[69]

In Western Canada, Mr. Denis Desgagné made many of these same points. He also added that:

> ... we are concerned about the erosion of programming produced in Saskatchewan in the last decade caused by a shortage of funding. ... When there is a cut at Radio-Canada, there is a direct cut to the resources of the francophone community, there is a blow to our hope of maintaining the French language and culture in Saskatchewan.[70]

Thus, despite much appreciation for (and some frustration with) CBC's French-language services, it can be seen that the Corporation's reduction in local programming has been particularly hard on minority francophone communities outside Quebec.

But concerns with reaching and serving francophones in the regions were not limited to minority communities. In Halifax, for example, one witness argued that CBC Radio lacks diversity and that local service to Nova Scotia's regions, is poor, at best. He explained:

> CBC Radio budgets were slashed, and as a result CBC Radio spends much of its time broadcasting the happenings in and around Halifax and Sydney to the rest of the province. ... Moreover, the lack of competition, never a healthy thing in journalism, made CBC Radio complacent. As one critic noted recently, Halifax is an increasingly interesting and cosmopolitan city, but you'd never know it from listening to the local CBC morning program.[71]

Others argued that the concentration of CBC resources in larger centres was unfair to their communities, particularly since larger centres are already well served by private media. Most notably, the Committee was told repeatedly that Atlantic Canadians watch, listen and value the public broadcaster, but that their sparse population prevented better service. Similarly, in Western Canada, the CBC's importance was regularly emphasized, with numerous witnesses pleading for a renewed local and regional presence.

The CBC's Role and Mandate

Nearly all witnesses shared their views on what our national public-service broadcaster's role and mandate should be in today's complex and ever-changing communications environment. And the conundrum was clear — how does one situate a publicly funded broadcaster in an era of increasing choice and fragmented audiences? What is its role? What should its mandate be? What should it be doing? Can it still be justified? And, how should it be funded?

Few witnesses argued that the CBC should be disbanded. There were some, however, who objected to the use of public funds. For example, one witness stated:

> ... if people don't want to watch [the CBC], they'll turn it off. But the taxpayer shouldn't be paying for the CBC. It's divisive. Who has confidence in the CBC? Who watches it? Stop paying it. Get out of it.[72]

But this perspective was the exception, not the rule. The Canadian Association of Broadcasters suggested that the CBC's "successes should not be measured in terms of business objectives or performance indicators" and that it "must not simply duplicate the type of programming provided by the private sector".[73]

Indeed, private broadcasters repeatedly told the Committee that CBC programming should be complementary, rather than just another competitor; moreover, ratings should be secondary. After all, as Global Television's CEO, Mr. Leonard Asper told the Committee: "Unfortunately, the way it is, whether it's Australia or Germany or Ireland, *X-Files* and *Friends* and *Survivor* are programs that drive the schedules of broadcasters everywhere."[74]

Taking this point a step further, the CBC's Chair reminded the Committee that the Corporation is still a very important training ground and, in this regard, attracts Canadian talent, both in front of and behind the camera. She noted:

> During your recent tour out West, some of you met Chris Haynes. He's a talented CBC recording engineer in Regina who went to school in the United States, but came back to Canada because he wanted to work for CBC, where he could do state-of-the-art production.[75]

Similarly, at CBC Halifax, the Committee met a young singer who was recording her music for the first time and, later on, it witnessed production of Scott MacMillan's *MacKinnon's Brook Suite*, that follows the journey of a pioneer family from Scotland to Nova Scotia.

Funding Considerations

The CBC's current parliamentary appropriation helps fund its six main networks, 102 originating stations, 26 privately owned affiliates, the distribution of its conventional signals, and its new media initiatives.[76] The Corporation, however, has never been fully supported by public funds, nor has there ever been full agreement on an appropriate funding mix. In 1929, for example, the Aird Commission argued that:

> If the general public as a whole were listeners, there might be no just reason why the full cost of carrying on a broadcasting service could not be met out of an appropriation made by Parliament from public funds.[77]

In contrast, in 1957, the Fowler Commission concluded that:

> … advertising is a positive contributor to living standards and economic activity and should not be regarded as … regrettable … when the CBC is engaged in commercial activities, it should do so vigorously and with the objective of earning the maximum revenue from those activities.[78]

Complicating matters has been the annual renewal of the CBC's appropriation by Parliament, a situation that has always prompted concern over its independence from government. Indeed, more than 50 years ago the Massey Report noted that:

> There are … serious objections to an annual grant to be voted by Parliament. Although other essential government services depend on an annual vote, it is so important to keep the national radio free from the possibility of political influence that this income should not depend annually on direct action by the government of the day. A statutory grant seems to us a more satisfactory method, because it enables the CBC to formulate reasonably long range plans with the confidence that its income will not be decreased over a period of years.[79]

Budget instability not only disrupts the CBC's plans each year, but causes difficulties for several years thereafter. This is because the program production cycle, particularly in television, often lasts several seasons. As Mr. Rabinovitch told Committee members:

> It's sobering to realize that it takes about three years for a program to go from the concept stage to the development stage to being on air, and without an assurance of funding over a period of time it's very difficult to make the commitments that result in programs getting to air."[80]

Under the circumstances, it can be seen why advertising revenue remains so important for the CBC. Indeed, several witnesses told the Committee that advertising revenues allow the CBC to be fiscally prudent and that removing advertising would reduce healthy competition in the advertising environment.[81] That said, consultant Peter Desbarats, in a paper prepared for the Committee, noted that: "Cuts in the CBC's parliamentary allocations have led to a greater reliance on advertising, blurring one of the essential distinctions between public and private broadcasters."[82] Furthermore, the 1999 study by McKinsey & Company found a negative correlation between public broadcasters' reliance on advertising and spending on original programming.[83]

For his part, the CBC President explained that:

> ... the question of commercials has been a touchy one for a long time. Sometimes some of the private sector would like us out of the commercial business because of the space it would create for them. We cannot survive without commercials as our funding formulas now stand, but what we have tried to do in the last three years is look at program genres and ask ourselves whether there should be commercials in this genre and whether we can afford to get out of commercials in this area. .... But we've gone as far as we can go in getting out of commercials.[84]

The CBC's budgetary shortfall also helps explains why it has always needed private sector partners and, more recently, international partners.[85] In its view, the Alliance of Canadian Cinema, Television and Radio Artists believes that "there should not be a formal business alliance between the CBC and any private company" because it weakens the resolve to hold the bar high.[86] However, as Mr. Rabinovich explained to the Committee:

> I have taken as my mandate, and my board has confirmed it, that we are to run the CBC on as commercial a basis as possible. And to the extent that we have assets, I believe it's our responsibility to generate revenue with those assets, not to undercut the private sector."[87]

The CBC also raised a familiar theme: stable, long-term funding. Examples of what was said by witnesses in this regard are plentiful:

> We need adequate, long-term, effective financing for the CBC, and it hasn't been there.[88]

> ... if the government makes requirements of the national broadcaster in terms of Canadian content and cultural diversity, reflecting Canada back to Canadians (as the CRTC has done), then the government must give the CBC and Radio Canada the means to accomplish those goals.[89]

> ... the CBC must have increased financial resources to play a central role in the current and future broadcast environment by continuing to be a producer of Canadian stories.[90]

> With regard to CBC TV, I would argue that they should get a lot more money and become ad-free.”[61]

D. Proposed Solutions

The CBC's President made one of the most important statements of the Committee's study when he reminded Members that: “The only thing that really matters in broadcasting is program content; all the rest is housekeeping.”[62] These were the words of the 1965 Fowler Committee study on Canadian broadcasting; they are as relevant today as they were then, perhaps even more so.

While programming services aimed at particular public interests, citizens or communities have an important niche within today's multi-channel world, the Committee recognizes that it will be more difficult for public broadcasters with a broad, general mandate to resituate themselves. Before discussing this issue, however, it is worth remembering that the world in which public broadcasters operate today is considerably different than the world within which they were conceived.

In the 1920s and 1930s (the period during which the CBC was proposed and launched) most adults did not have a high school education, and university graduates were far fewer than 10% of the adult population. While learning is a life-long process, one could easily argue that the “inform and educate” function envisaged by the pioneers of Canadian broadcasting policy is less relevant today, particularly when one considers that Canada and most developed countries have much higher levels of literacy, schooling, and much richer educational establishments (e.g., graduate schools, special purpose colleges and training institutes). That said, given today's highly commercialized communications environment, one could just as easily argue that the “inform and educate” element is more important than ever before.

A second element is the sheer volume of choice now available to most citizens. In 2002, more than eight million Canadian households had access to 50 or more television channels, nearly 100% of all households had radio and more than 50% had Internet access. Contrast today's situation with the 1930s, when there was no television and most households received just a handful of radio stations. Newspapers were thinner, magazines fewer and the only way to communicate across vast distances was by mail or — for those who could afford the expense — the telephone. Moreover, bookstores with tens of thousands of titles such as the ones we find in most large cities today simply did not exist.

Whether the choices we find in today's media represent meaningful choice, however, is another matter altogether. Indeed, the Committee heard from several witnesses, particularly during its hearings on media ownership, who believed that today's new media environment in fact validates the need for a distinctive and strong public broadcaster such as the CBC.

No matter one's perspective, it is indisputable that changes in communications practices have contributed to the decline of the mass audience and increased audience fragmentation, even during the time this Committee was holding hearings and drafting this report.[93] For this reason, while it is true that more than 1.8 million Canadians watched the *Trudeau* series, this will remain the exception, not the rule, unless large sums of money are directed into original Canadian programming. Indeed, as noted in Chapter 4, even prime time has been seriously undermined by the profusion of channels, the Internet and the advent of the personal video recorder (PVR).

Thus, dealing with increased choice creates special challenges for today's public broadcasters. As already noted, the Aird Commission suggested that it was not unreasonable to imagine the cost of the national broadcaster being covered by the public purse if the bulk of the population was listening to the national broadcaster. What if, however, the majority of the population is not watching or listening to the national public broadcaster? In a broadcasting environment with more than 200 channels, any program with more than 2 or 3% of the audience is — in many ways — a success. But this lends little comfort to a public broadcaster that relies on a Parliamentary appropriation. There are two problems, one of legitimacy and one of meeting public mandates.

Underlying the "inform and educate" aspect of the public broadcaster's mandate is an assumption that broadcasting can "enhance social cohesion by creating high-quality, mass-appeal programs."[94] For this reason, McKinsey & Company suggest that the general-purpose public broadcaster will need to use:

> A scheduling approach that uses mainstream type programming (albeit with appropriate standards of quality) to bring in the

> audiences and "earn the right" from the viewer to expose them to a wider variety of genres — particularly in educational and informative areas."[95]

This strategy, however, will be very difficult to execute in the unlimited-channel universe, where citizens are equipped with remote controls, VCRs, DVDs, set-top boxes and PVRs.

But what makes matters worse for today's public broadcaster is that the traditional network strategy of attracting an audience to one show — so that it can keep it for several hours thereafter — no longer works with so many programming sources from which to choose. The Mandate Review Committee of 1996 recognized this very dilemma when it observed:

> ... the CBC is running into competition ... from new "high-end" cable-based networks as well as other publicly funded broadcasters. These include Arts and Entertainment (A&E), the Discovery Channel, and Bravo!, as well as broadcasters like PBS, TVOntario and the Knowledge Network — all of whom carry programming that to some degree parallels the CBC's schedule.[96]

This is why it suggested that the CBC develop more material with mass appeal:

> Our model for CBC television does not suggest a narrow niche. It is far more pluralistic than elitist. In other words, while the new CBC must strive to provide a "quality alternative," it must also take seriously its mandate to serve a wide cross-section of audience tastes and needs. While we recognize this is a challenging task in the multi-channel universe, we also believe this is the only way for CBC to survive."[97]

Since that time, however, many more specialty channels have been launched (or made available) and the CBC's audience has continued to shrink. But the CBC is far from being alone in dealing with this phenomenon; many European public broadcasters also saw their audiences contract during the 1990s. Moreover, in the United States, even the well-established private networks (ABC, CBS and NBC) have struggled to maintain their audience shares in an increasingly fragmented market, with an ever-expanding array of channel choice.

It is perhaps inevitable, therefore, that the absence of a mass audience for a general purpose public broadcaster will lead to the slow erosion over time of its claim on the public purse. For this reason alone, general purpose public broadcasters will continue to face financial pressures and scrutiny in the political arena simply because their original mandate will seem less legitimate or realistic.

With these thoughts in mind, the Committee makes the following observations and recommendations, which it believes will help the CBC resituate itself in today's rapidly evolving broadcasting environment:

Stable Long-Term Funding

As noted repeatedly, the CBC has been struggling to stay afloat financially for some time. It is worth remembering that this Committee made recommendations concerning stable funding in its June 1999 cultural policy report, *A Sense of Place — A Sense of Being*. It stated:

> That … The Canadian Broadcasting Corporation receive continuing, stable funding so that it remains a public, non-profit corporation for the common good.
>
> … CBC Radio receive sufficient levels of stable, sustained funding so that it need not resort to corporate sponsorships, commercial or non-commercial advertising.
>
> … CBC Television receive sufficient levels of stable, sustained funding so that advertising can be reduced to minimal levels."[98]

One year later, the Auditor General's *Special Examination Report* on the CBC, stated:

> The CBC cannot operate in an optimal fashion without a strategy that balances the results it is expected to deliver, expectations for audience reach, and how available resources can be optimally configure to meet them. … it needs a process through which the Corporation and its key stakeholders can periodically discuss the role and funding of the public broadcaster and measure its success."[99]

In light of what the Committee has heard over the past two years, it sees no reason to depart from the recommendations that it made in 1999. The Committee is concerned, however, that the Corporation may need more than an assurance of stable funding in order to meet its longer-term needs. The Committee is pleased to note the government's February 2003 announcement, through the Minister of Canadian Heritage, "that new funding [$60 million] to the CBC is indeed in the fiscal framework."[100] However, in light of the overall decrease in the CBC's parliamentary appropriation in the past decade, coupled with growing demands on its resources, the Committee believes that additional funding is warranted. The next sections discuss areas where the Committee feels strongly that the CBC may require further funding. Meanwhile:

RECOMMENDATION 6.1:

The Committee recommends that Parliament provide the CBC with increased and stable multi-year funding (3 to 5 years) so that it may adequately fulfill its mandate as expressed in the Broadcasting Act.

Local and Regional Programming

As already noted, the Committee is very concerned that budget cuts — which prompted the CBC to focus on its role as the national public broadcaster — have led to a reduction of local reflection in many areas of Canada where there are few alternatives. While the Committee recognizes the importance of national programming, it notes with concern that many believe that culture at the local level has suffered because of the reduction of CBC services. By extension, these actions appear to have undermined the important role of the Corporation as a cultural incubator.

Canadians have for some time been seeking a resolution to the question of how the CBC should balance service provision to local and regional communities. As noted earlier, the CBC's mandate includes the provision that: "the programming provided by the Corporation should ... reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions" [emphasis added]. **Since the responsibility to serve the special needs of the regions is already in the CBC's mandate, the Committee see no reason to recommend any change to reflect this requirement.**

As for local service provision, the Committee observes that the Act states in Section 3(1)(*l*)(ii) that: "the programming provided by the Canadian broadcasting system should ... be drawn from local, regional, national and international sources." For this reason, **the Committee is of the view**

that it is incumbent upon the CBC to ensure that levels of local programming — based on local needs — are delivered to audiences.

The Committee notes that in 1980, the CBC's President, Mr. A.W. Johnson, told the Applebaum-Hebert Cultural Policy Review Committee that: "a reasonable part of ... Canadian programs ... must be regional and local programs for regional and local consumption. To do other wise would be to fail to meet our mandate."[101]

The Committee is of the view, however, that the CBC cannot possibly be expected to act on one part of its public mandate — over and above its other responsibilities — if it is not ensured sufficient resources. Nor should the CBC be expected to be the only broadcaster with obligations to Canada's regions. This is why Chapter 9 of this report recommends the creation of a Local Broadcasting Initiative Program that would be available to all broadcasters — including the CBC — that would facilitate partnerships between local broadcasters and interested stakeholders in the development of programming services to serve the special needs of certain areas.

The CBC may have to see its role as asymmetrical. In a country as large and diverse as Canada, the public broadcaster may need to have a different presence and different responsibilities in different parts of the country. In Toronto, for instance, the CBC is only one voice among many in a highly competitive market. Its role is to offer programming that is distinctly different from that provided by private broadcasters. In places such as rural Saskatchewan or rural Quebec, or in Newfoundland, however, the CBC may be the only strong voice. In these contexts, it has the capacity to be one of the essential building blocks of community life. Clearly the CBC can no longer be all things to all people in all parts of the country.

Canadian Programming

If the CBC is to be revitalized, a strategic plan for local and regional service provision is only the first step. Indeed, it was abundantly clear from what the Committee heard that limited resources also impair the Corporation's capacity to deliver a sufficiently wide range of high-quality, distinctively Canadian television programming. This is despite ample evidence from the audiences garnered for recent projects such as *Canada: A People's History*, *Trudeau*, *Music Hall* and *Le dernier chapitre*, that Canadians do indeed have an appetite for high-quality Canadian programming. With these considerations in mind, the Committee feels strongly that the CBC's Board should develop a plan for the Corporation's long-term Canadian programming objectives.

Reaching New Audiences

During its visits to CBC facilities across Canada, the Committee was extremely impressed by the scope, quality and quantity of new media services that the Corporation has developed. It was clear that initiatives such as *Radio 3*, *Bandapart* and *ZedTV* are an appropriate and cost-effective use of the Corporation's revenues to reach a wider, and younger audience. Moreover, the Committee was strongly persuaded by what it heard and saw through the course of its study that the future of communications, both in Canada and throughout the word, will be dependent on cross-platform strategies in which online content is used to supplement radio and television programming. Therefore, given the rapid growth of the Internet as a new communications protocol used by Canadians:

RECOMMENDATION 6.2:

The Committee recommends that for greater clarity the Broadcasting Act be amended to recognize the value of new media services as a complementary element of the CBC's overall programming strategy.

Strategic Planning

In light of the above discussion, the Committee sees it as more essential than ever that the CBC communicate to Canadians — in clear terms — how its mandate will continue to serve their needs in the years to come. The Committee believes that the Corporation's Board has an active and important role to play in the formulation and refinement of policy to address the CBC's role in local and regional reflection in underserved areas, in Canadian programming and in new media programming. With this in mind:

RECOMMENDATION 6.3:

The Committee recommends that the CBC deliver a strategic plan, with estimated resource requirements, to

Parliament within one year of the tabling of this report on how it would fulfill its public service mandate to:

(a) deliver local and regional programming.

(b) meet its Canadian programming objectives.

(c) deliver new media programming initiatives.

Governance and Accountability

Chapters 18 and 19 discuss a set of issues that have implications for the future functioning of the CBC, including: appointments to boards, conflicts of interest, governance and accountability. These chapters also point out that coherent objectives, sub-objectives and targets for certain public policy instruments — including the CBC — are either ill-defined or missing altogether. They also note that the measurement and reporting of outcomes by these agencies tend to focus on outputs, rather than outcomes. With this in mind, the Committee believes it to be essential that the strategic plans described above be designed in such a way that it will be possible — if implemented — to measure and report on outcomes on a regular basis in the years to come. Accordingly:

RECOMMENDATION 6.4:

The Committee recommends that the impacts and outcomes of the CBC's strategic plans (for the delivery of local and regional programming; Canadian programming; and, cross-platform, new media initiatives) be reported on annually and evaluated every two years. These evaluations should meet Government of Canada program evaluation standards.

Operational Flexibility

When it appeared before the Committee, the CBC identified several key areas where it believes changes to the *Broadcasting Act* would provide the Corporation with increased operational flexibility. The Committee recognizes that several of these requests would likely help the Corporation in its operations. That said, because these particular recommendations deal with very specific aspects of the *Financial Administration Act* and Treasury board requirements, they lie beyond the scope of this Committee's mandate. Nevertheless, the Committee is of the view that it is an issue that deserves further consideration by government.

The Committee also recognizes that the CBC may have specific one-time funding for the transition from analog to digital technologies (see Chapter 12). Accordingly:

RECOMMENDATION 6.5:

The Committee recommends that the CBC submit a plan to Parliament detailing its needs for the digital transition and that it receive one-time funding to meet these needs.

The CBC's Place in the Canadian Broadcasting System

Broadcasting in Canada has changed dramatically since the creation of the CBC in 1936. **After much deliberation, the Committee remains convinced that the CBC continues to represent an important public policy instrument that not only nurtures, but helps promote Canada's vibrant and diverse cultures.** This is why the Committee is of the view that the time has come — and that it is entirely possible — for Canada's national public broadcaster to be re-invigorated with a new mandate — one that would meet with general acceptance from Canadians. Accordingly:

RECOMMENDATION 6.6:

The Committee reaffirms the importance of public broadcasting as an essential instrument for promoting, preserving and sustaining Canadian culture and recommends that the government direct the CRTC to interpret the *Broadcasting Act* accordingly.

Related to this recommendation is the Committee's grave concern that the CRTC has for some time been micromanaging the CBC's day-to-day activities by issuing conditions of licence that include: expectations for the selection of programming, how much programming of certain types should be broadcast, and how money should be allocated to various budgets. The Committee returns to this topic in Chapter 19.

Endnotes

[1] Australian Broadcasting Corporation Act (1983), section 6.

[2] McKinsey & Company, *Public Service Broadcasters Around the World: A McKinsey Report for the BBC* (London: McKinsey & Company, 1999).

[3] For example, a recent survey of public television conducted by the Centre d'études sur les médias (Portrait de la télévision publique dans dix pays, dont le Canada, 2001) makes no mention of Canada's educational or not-for-profit broadcasters. Similarly, Mckinsey & Company's 1999 study of public service broadcasters focuses exclusively on generalist broadcasters with significant public funding.

[4] Gaelic is spoken in Scotland, Wales and Ireland.

[5] As one witness observed observed: "Britain has a larger population, perhaps double the population. The land mass of Britain is about half the size of the island of Newfoundland, let alone Labrador." 29 April 2002.

[6] Peter Humphreys, *Regulatory Policy and National Content: The UK Case*, Department of Government, University of Manchester, England (2002), p. 1.

[7] McKinsey & Company.

[8] Ibid, p. 28.

[9] Ibid, p. 29.

[10] Jeanette Steemers, "Public Service Broadcasting Is Not Dead Yet — Survival Strategies In The 21st Century." Paper presented at the RIPE@Conference, Finland, 2002, 17-19 January 2002, p. 4.

[11] The major elements that were removed from the Corporation's mandate in 1991 included the expectation that the CBC: contribute to Canadian national unity, provide a service that balances its types of programming; serves people of different ages, interests and tastes; carries the whole range of programming available; relies exclusively on public funds; or, provides specifically regional entertainment.

[12] Since its earliest days, the CBC's role and mandate has been regularly studied and reviewed. For reference purposes, a list these various studies is provided in Appendix 10.

[13] ARTV and The Documentary Channel are run in collaboration with private sector partners.

[14] CBC Research, February 2002.

[15] The most recent summary of Canadian radio listening issued by Statistics Canada (*The Daily*, October 21 2002, Catalogue 11-001-XIE) shows that CBC's radio services (in English and French combined) accounted for about 7.1% of all radio listening in fall 2001. This figure is significantly lower than the data listed in table 4.2 because Statistics Canada calculates average listening time based on "the total number of hours of listening divided by the total number of persons, regardless of whether or not they listened to the radio." This difference in what is being measured relates to an important distinction about the interest of advertisers and policy-makers, which is addressed in Chapter 4.

[16] See Chapter 4 for more on the increase in channel choice in Canada's English- and French-language television markets.

[17] CBC Research typically compares its audience share and viewing data with conventional, over-the-air broadcasters. See Chapters 4 and 8 for data on the broader context of all television viewing in Canada.

[18] These audience numbers are very low if compared with the full slate of American programming viewed by Canadians in prime time. A more extensive discussion of audience share for Canadian and foreign programming is undertaken in Chapter 4.

[19] Moreover, the CBC's parliamentary appropriation is down nearly $300 million from the mid-1980s.

[20] Of the $840.4 million that the CBC received from Parliament in 2001-2002, $60 million was one-time funding; thus, its original appropriation was $780 million before the top-up.

[21] It should be noted that the CBC's sole source of advertising revenue comes from television.

[22] The CBC delivers its main radio networks (including local feeds) via the Internet and offers some video clips (largely news and information) from its television networks.

[23] Report of the Task Force on Broadcasting Policy (Caplan-Sauvageau) (Ottawa: Minister of Supply and Services Canada, 1986), p. 269.

[24] Mr. Gerard Veilleux, CBC President, *CBC Annual Report 1992-1993*, "President's Report," p. 10.

[25] CBC Annual Report, 1993-94.

[26] CBC Annual Report, 2000-01.

[27] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[28] Ibid.

[29] Mr. Armand Dubois (TVA Network Journalist in Montréal, Provincial Council for the Communications Sector, Canadian Union of Public Employees), Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[30] Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[31] Canadian Union of Public Employees Provincial Council for the Communications Sector., Brief., Appendix G., p. 8-9.

[32] Canadian Independent Record Production Association, Brief, p. 3.

[33] Canadian Media Guild and The Newspaper Guild, Brief, p. 30.

[34] Writers Guild of Canada, Brief, p. 5.

[35] Canadian Union of Public Employees Provincial Council for the Communications Sector, p. 5.

[36] Serge Paquin, Secretary General, Alliance des radios communautaires du Canada, Meeting of the Standing Committee on Canadian Heritage, 19 March 2002.

[37] Allan S. Taylor, Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[38] Ken Schykuiski, Letter to the Standing Committee on Canadian Heritage, 2 March 2002.

[39] Thor Bishopric, President, Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[40] Leo Furey, President, Newfoundland and Labrador Film Development Corporation, Meeting of the Standing Committee on Canadian Heritage, 29 April 2002.

[41] Katie Nicholson, St. John's International Women's Film and Video Festival, Meeting of the Standing Committee on Canadian Heritage, 29 April 2002.

[42] Fédération nationale des communications, Brief, p. 16.

[43] Barri Cohen, National Chair, Canadian Independent Film Caucus, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[44] Thor Bishopric, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[45] Greg Malone, Meeting of the Standing Committee on Canadian Heritage, 29 April 2002.

[46] Fédération nationale des communications, Brief, p. 15.

[47] Patrick Flanagan, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[48] Brian Pollard, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[49] Leo Furey, Meeting of the Standing Committee on Canadian Heritage, 29 April 2002.

[50] Rick Mercer, Videotape shown to Committee in Halifax, Nova Scotia, 30 April 2002.

[51] *Making our Voices Heard: Canadian Broadcasting and Film for the 21st Century* (Mandate Review Committee), Report of the Mandate Review Committee (Ottawa: Department of Canadian Heritage, 1996), p.#45.

[52] Meeting of the Standing Committee on Canadian Heritage, 14 March 2002.

[53] Ibid.

[54] Ibid.

[55] Competition for audiences is discussed in Chapter 4.

[56] Meeting of the Standing Committee on Canadian Heritage, 14 March 2002.

[57] Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.

[58] Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[59] Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[60] Meeting of the Standing Committee on Canadian Heritage, 29 April 2002.

[61] Letter to the Standing Committee on Canadian Heritage, 14 February 2002.

[62] Canadian Union of Public Employees Provincial Council for the Communications Sector, p. 5.

[63] Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[64] George Park, Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[65] David Helwig, Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[66] Steve Stapleton, Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[67] Leo Furey, Meeting of the Standing Committee on Canadian Heritage, 29 April 2002.

[68] Ibid.

[69] Maria Bernard, Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[70] Denis Desgagné, Executive Director, Assemblée communautaire fransaskoise, 28 February 2002.

[71] Bruce Wark, Associate Professor of Journalism, University of King's College, Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.

[72] Gwendolyn Landolt, National Vice-President, REAL Women of Canada, Meeting of the Standing Committee on Canadian Heritage, 4 December 2001.

[73] Canadian Association of Broadcasters, Brief, p. 12.

[74] Meeting of the Standing Committee on Canadian Heritage, 1 March 2002.

[75] Meeting of the Standing Committee on Canadian Heritage, 14 March 2002.

[76] The CBC's specialty services (CBC Newsworld, RDI and Galaxie) finance themselves through subscriber fees, while Radio Canada International receives a separate parliamentary appropriation. It should be noted, however, that these services would not be self-supporting if it were not for the main network infrastructure.

[77] Report of the Royal Commission on Radio Broadcasting (Aird Commission) (Ottawa: F.A. Acland, 1989), p. 9.

[78] Warner Troyer, *The Sound & The Fury: An Anecdotal History of Canadian Broadcasting* (Toronto: Personal Library, 1982), p. 172.

[79] Report of the Royal Commission on National Development in the Arts, Letters and Sciences: 1949-1951 (Massey Commission) (Ottawa: King's Printer, 1951), p. 294.

[80] Meeting of the Standing Committee on Canadian Heritage, 14 March 2002.

[81] One witness went so far as to suggest that CBC radio should run corporate recognition spots (Robert Reaume, Vice-President, Media and Research, Association of Canadian Advertisers, Meeting of the Standing Committee on Canadian Heritage, 18 April 2002). Most other witnesses were adamant that the CBC's radio networks remain commercialfree.

[82] Peter Desbarats, *The Future of Public Broadcasting — Distinction or Extinction*. Prepared for the House of Commons Standing Committee on Canadian Heritage.

[83] McKinsey & Company.

[84] Meeting of the Standing Committee on Canadian Heritage, 14 March 2002.

[85] Private CBC affiliates have been delivering public service broadcasting to communities such as Dawson Creek, British Columbia; Brandon, Manitoba; Rouyn, Québec since the Depression of the 1930s.

[86] Alliance of Canadian Cinema, Television and Radio Artists, Brief, p. 15.

[87] Ibid.

[88] Brian Staples, Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[89] Independent Film and Video Alliance, Brief, p. 4.

[90] Writers Guild, p. 2.

[91] Alan Taylor, Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[92] Meeting of the Standing Committee on Canadian Heritage, 14 March 2002.

[93] Indeed, more then forty new digital television services were launched in the fall of 2001, the biggest single launch ever of television services in Canada.

[94] McKinsey & Company, p. 35.

[95] Ibid, p. 38.

[96] Mandate Review Committee, p. 107.

[97] Ibid, p. 107

[98] *A Sense of Place, A Sense of Being: The Evolving Role of the Federal Government In Support of Culture in Canada*, Report of the Standing Committee on Canadian Heritage (Ottawa: House of Commons, 1999), Recommendation 26, p. 98.

[99] Canadian Broadcasting Corporation — Special Examination Report, Office of the Auditor General of Canada, June 2000.

[100] *Hansard* (37th Parliament, 2nd Session), 19 February 2003.

[101] Federal Cultural Policy Review Committee, Summary of Briefs and Hearings (Applebaum-Hébert) (Ottawa: Minister of Supply and Services Canada, 1982).

THE STATE OF THE SYSTEM

Chapter 7

Not-For-Profit Broadcasting

Apart from the Canadian Broadcasting Corporation are several Canadian broadcasters that for all intents and purposes operate as public broadcasters. While some are relatively small community-based services with limited distribution and reach, others are substantially larger non-for-profit operations that rely on a combination of funding sources such as provincial or federal funds, subscription fees and/or advertising revenues. Taken together, these broadcasters, according to one analyst, are "probably without rival in any other country."[1]

This chapter presents summary information on the larger broadcasters in this category. These are: national services, international services and provincial educational services. Where applicable, what the Committee heard about these broadcasters will be raised.

A. National Services

Excluding the CBC and its specialty services, Canada has three other specialty television services that can best be described as national public broadcasters. These are: The Aboriginal Peoples Television Network (APTN); Vision TV (a multi-faith religious service); and, the Cable Public Affairs Channel (CPAC).

The Aboriginal People's Television Network

As noted in Chapter 2, Section 3 of the *Broadcasting Act* recognizes the "special place of Aboriginal peoples" within Canadian society and that "programming that reflects the Aboriginal cultures of Canada should be provided within the Canadian broadcasting system."

In response, the CRTC confirmed in 1998 that a national Aboriginal channel should be "widely available throughout Canada in order to serve the diverse needs of the various Aboriginal communities, as well as other Canadians."[2] The Aboriginal Peoples Television Network (APTN) was licenced soon thereafter.

The launch of the Aboriginal Peoples Television Network in September 1999 was a significant milestone in Canadian broadcasting. The network is mandated to provide a primary level of service for Aboriginal peoples, reflecting their concerns and the diversity within their cultures. It offers First Nations, Inuit and Metis people the opportunity to share their stories with the rest of the world. APTN also strives to offer all Canadians a window into the worlds of Canada's indigenous peoples to create "a bridge between cultures to foster understanding among all Canadians."[3]

Recent APTN programming has included a mixture of news, current affairs, children's series, educational programs, variety, North American exclusive dramas, documentaries and movies. In October 2002, the network launched a daily national newscast, the *APTN National News*. The network has also launched a weekly call-in forum for on-air discussions on the topics and newsmakers of the day that affect Aboriginal communities across Canada.

Sixty percent of APTN's programming is in English, 25% is in Aboriginal languages and 15% is in French. By condition of licence, it must offer at least 70% Canadian content.[4] APTN is available to eight million Canadian households via cable, direct-to-home satellite and wireless services. In 2002, it received $15.8 million in subscription fees, $2.1 million from the Department of Canadian Heritage, and a further $4 million through advertising and other sources, for total revenues of nearly $22 million.

APTN met twice with the Committee in Winnipeg (in a formal hearing and later at its downtown facilities) during which the network's representatives detailed a trail of broken promises and unfulfilled recommendations. For example, a study released by the Department of Canadian Heritage (The McGregor Report) in 2000 recommended that $4.74 million for equipment upgrades be given to organizations funded by the Northern Native Broadcast Access Program (NNBAP).[5] Another recommendation proposed that NNBAP organizations that are ineligible for television receive $7.062 million. To date, however, the Department has not acted on these recommendations.

APTN's chairman, Mr. Clayton Gordon, told the Committee that an immediate cash infusion for capital expenditures is badly needed:

> The first and most urgent [issue] is the need for a one-time capital replacement fund. Crippled by two decades of cuts, many of the NNBAP-funded broadcasters are reduced to working with obsolete

> cameras, editing systems, and audio gear that would not be accepted in a local cable company, let alone on a national network.[6]

Furthermore, because APTN buys much of its programming from independent producers, its representatives raised concerns over the gradual decline in funding for Aboriginal producers. In this regard, Mr. Jim Compton, APTN's program director, pointed out a distressing irony: although distribution has become bigger and better with the arrival of APTN, funding through NNBAP now is lower than ever. He noted, "[t]his is like announcing a national program to build highways and simultaneously declaring a ban on automobiles." ,'[8]

Mr. Compton elaborated on this point, explaining that at one time the NNBAP:

> … supported 13 northern groups right across the country, from B.C. to Labrador. Every region made an initial decision about the kind of service it was going to offer, radio or television, with the understanding that all of these 13 NNBAP groups would shortly be funded to provide services in both media — television and radio.
>
> Unfortunately, funding for the growth of the NNBAP was frozen following the 1984 election, and the radio producing groups were never allowed to expand into television. Entire regions of Canada were left without television service in their language. There are no NNBAP-funded TV producers in Alberta, Saskatchewan, francophone Quebec, B.C., or among the first nations of the Northwest Territories.[9]

Problems with mainstream funding sources were also raised by APTN, particularly with Telefilm Canada and the CTF. The CTF rules, APTN explained, do not adequately take into account the needs of Aboriginal producers. For example, if a film is to be shown to a national audience, an English or French version is required; the Aboriginal envelope, however, requires programming to be shot in Aboriginal languages. This forces APTN to make multiple versions — at great expense — simply to be eligible for funding. As Mr. Gary Farmer told the Committee in Halifax:

> First you spend 150 years taking our language away from us, and now that we all speak English and French, you won't allow us to work in those languages.

> [Now w]e have to work in our first nations languages in order to access the funds ...[111]

Accordingly, APTN would like to see Aboriginal envelopes that include English- and French-language productions. APTN would also like an additional $1.5 million for French-language production and $6 million for English-language production to coincide with its conditions of licence.

Chapter 10 makes a number of specific recommendations concerning capital replacement costs, funding and training programs for Northern and Aboriginal broadcasters, which the Committee believes will help address many of the issues that were raised by APTN. That said, the Committee also recognizes that APTN's faces unique challenges as Canada's Aboriginal television network. For this reason, the Committee makes the following recommendations:

RECOMMENDATION 7.1:

The Committee recommends that the Department of Canadian Heritage take immediate and appropriate action on the recommendations of the McGregor Report on the needs of Northern and Aboriginal broadcasters.

RECOMMENDATION 7.2:

The Committee recommends that the rules governing the Canadian Television Fund and Telefilm Canada be amended, in consultation with APTN and other Northern and Aboriginal stakeholders, to more effectively address the special needs and conditions of Aboriginal television production and broadcasting.

RECOMMENDATION 7.3:

The Committee recommends that the government develop a support strategy to ensure that Aboriginal programming intended for national audiences on APTN can be versioned in English or French, as required.

The Cable Public Affairs Channel

Canada became the first country to televise live political debates in 1977. From 1979 to 1991, responsibility for providing coverage of the proceedings of the House of Commons was assumed by the CBC.

In 1991, the CBC announced that it would stop funding the House of Commons service for financial reasons, but the House subsequently authorized payment to continue satellite-to-cable carriage of its proceedings. Soon thereafter, a consortium of cable companies took over the service's operations under an agreement with the Speaker of the House of Commons.[11]

In 1993, the Cable Public Affairs Channel (CPAC) received a one-year experimental licence for coverage of the proceedings of the House of Commons and public affairs programming. Two years later, the Commission renewed CPAC's licence for a full seven years. In May 2002, the service appeared before the Commission with proposals for the next seven.

Based in Ottawa, CPAC is Canada's only bilingual, national, satellite-to-cable, commercial-free, not-for-profit service. It is principally owned by three of Canada's largest broadcast distributors: Rogers Cable Inc. (42.6%), Shaw Cablesystems (25.8%) and Vidéotron ltée (21.7%).[12] More than 80 Canadian cable companies fund CPAC's operations ($6.7 million in 2001-02) and deliver the service, free of charge to approximately 8.6 million homes. The network receives no government funding, nor is it affiliated with any government department or agency.

Every week about 1.6 million Canadians tune into CPAC's selection of political and public affairs programming. Programming from the House of Commons, Senate (proceedings and committees) and the Supreme Court is given to CPAC free of charge. In July 2002, 62.5% of its schedule consisted of House of Commons and Senate proceedings, while the remaining 33.9% was public affairs and 3.6% was foreign programming. Apart from its parliamentary programming, the network also produces a nightly current affairs program, *Primetime Politics*, and the interactive political discussion forum, *Talk Politics*.

In the 2001-02 budget year, CPAC carried 155 public events from across the country. With a full-time staff of 40 based in Ottawa and a pool of freelancers working in every major Canadian city, House of Commons programming is made available to CPAC in three versions: English, French and floor sound.[13]

CPAC's President, Ms. Collette Watson, described the service's mandate and role as follows:

> CPAC plays a crucial role in the Canadian broadcasting system by providing a forum for diversity of voices. CPAC's mission is to create a television destination where Canadians can become informed on public policy initiatives and form their own opinions without editorial direction from a corporate or government entity. Now more than ever, as convergence takes its toll on the number of editorial voices in Canada, CPAC plays an important role in providing a forum for public policy debate and in ensuring the presence of a diversity of voices and viewpoints in a broadcasting system.[14]

Most of CPAC's primetime programming is translated into French. In May 2002, CPAC proposed to air a new French-language daily public affairs program and to commit 20% of its long-form coverage programming to conference and inquires originating in French. It also committed to applying 25% of its licence fees for documentaries to original documentaries in French.[15]

The Committee notes that a February 2003 report by the Standing Committee on Official Languages studied reasons why CPAC is not always distributed in both official languages or available in certain régions. In this regard, it observed:

> ... that a certain proportion of BDU subscribers are required to pay a monthly fee for a signal they cannot receive in the official language of their choice, and that it is technically possible to offer them that signal in the official language of their choice.[16]

For this reason, it concluded: "that the Governor in Council, pursuant to its authority under the *Broadcasting Act*, [should] correct this undesirable state of affairs."[17]

The Committee agrees with this conclusion. Therefore, it repeats the recommendations of the Standing Committee on Official Languages below:

RECOMMENDATION 7.4:

The Committee recommends that the Governor in Council by order direct the CRTC to make it mandatory for all broadcasting distribution undertakings (BDUs), without exception, to distribute to all their subscribers the video and audio signals of the debates of Parliament via CPAC in both official languages.

RECOMMENDATION 7.5:

The Committee recommends that the CPAC signal distributed as part of the basic cable service be protected from displacement by closed circuit video programming, and that the *Broadcasting Distribution Regulations* be amended in this regard if necessary.

VisionTV

VisionTV is a not-for-profit specialty television service that is the only multi-faith and multicultural broadcaster in the world. It is expected by the CRTC to be "a broadly based network programming service devoted to serving the varied religious practices and beliefs of Canadians, on a national interfaith basis."[18]

VisionTV received its first licence in 1987. It is now available as part of basic cable or satellite service to than eight million households. The network is funded largely through advertising and subscription revenues and is allowed by the CRTC to collect 8 cents per subscriber each month. In 2001, Vision had revenues of approximately $15 million.

Vision delivers two types of programming: "cornerstone" and "mosaic." Cornerstone programming is produced or acquired by the network and represents about half of its schedule (48%). It includes both acquired foreign programming, as well as in-house productions. Mosaic programming is purchased airtime for shows that are produced and presented by groups from a variety of religious denominations, including Catholics, Protestants, Muslims, Baha'is, Sikhs and Hindus. Approximately 75 different faith groups purchase airtime from VisionTV each year. Many of these programs cater to the needs of audiences that no other broadcaster serves.

The main point raised by Vision during its appearance before the Committee was its proposal that a mandatory "foundation tier" (or "green space") be created for the cable and satellite distribution of key Canadian networks, particularly Canada's public and not-for-profit broadcasters. This matter is discussed later in this chapter.

A second point raised by Vision concerned onerous compliance costs associated with CRTC licence renewals and the associated financial burden. Since this issue has to do with the CRTC's regulatory practices, it will be addressed in Chapter 19.

B. International Services

Canada has two international public broadcasters: Radio Canada International, a federally funded short-wave radio service; and, TV5, a federally (and Quebec) funded, French-language television service.

Radio Canada International

Radio Canada International (RCI) is Canada's broadcasting portal to the world beyond our borders. RCI is Canada's version of the BBC World Service, the Voice of America and Deutche Welle (Germany). RCI began as CBC's international service on Christmas Day 1944 and was in official operation by February 1945 as a way for our soldiers to keep in touch with events at home, and as an uncensored news source for international listeners. It was renamed Radio Canada International in 1972.

Although the CBC houses RCI, it is supported under the terms of a contribution agreement with the Government of Canada. In 2001, its total operating and capital funding was $20.5 million dollars. RCI provides a fully Canadian content service in seven languages: French, English, Spanish, Mandarin, Arabic, Russian, and Ukrainian. Programming is available via short-wave radio, the Internet, satellite, and a network of AM and FM partner stations around the world.

In the past, proposed or actual cuts to RCI have immediately triggered high-profile public campaigns to protect the service and its place in the Canadian broadcasting system. Since 1991, the CBC's obligation to the service has been enshrined in Section 46(2) of the *Broadcasting Act*:

> The Corporation shall, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, provide an international service in accordance with such directions as the Governor in Council may issue.

Two groups, the RCI Action Committee and the Canadian International DX Club, made passionate submissions to the Committee. The RCI Action Committee told the Committee that the government's support for an international service:

> … must go further than just a general statement to "provide an international service". The *Broadcasting Act* must outline RCI's mandate to "attract an international audience" and develop "international awareness of Canada" [the CBC's Corporate Policy No. 14]. It must specifically oblige RCI to prepare such programming in both official languages, English and French. There should be sufficient guidelines in the Act to ensure most regions of the world are covered, and to ensure RCI broadcasts in major foreign languages, and any others deemed important or useful. Without necessarily enumerating each region and language, these directives must be strong enough to prevent anyone but Parliament from being able to change the mandate of RCI. At the moment, there is very little that prevents the CBC from cutting services back radically. This despite the fact that all of RCI funding comes from the Canadian Heritage Department.[19]

Several recent studies have made similar recommendations.[20] For example, a recent Senate Committee study recommended:

> That the government ask the Canadian Broadcasting Corporation to review the mandate of its international broadcasting service in consultation with the Department of Foreign Affairs and International Trade Canada with a view to clarifying and strengthening it. This review would consider the inclusion in the mandate of an obligation on the part of Radio Canada International to produce and create English and French language programs to be broadcast to all mandated geographic regions, prioritizing these regions to include countries such as Japan, Germany, and China.[21]

The RCI Action Committee further noted that:

> in June of this year [2001], RCI-produced newscasts in seven languages were eliminated on weekends. Live programming was

> also cut on weekends. Morning shows in English and French to Africa, the Middle East and Europe, were eliminated, as well as an evening broadcast to India. One hour broadcasts to Russia and Ukraine, were cut to half an hour.[22]

Similar service reductions occurred in 1991 when Czech, German, Hungarian, Japanese, Polish, Portuguese (Brazil) and Slovak-language programming services were cut, and French and English services were scaled back. These cuts reduced programming hours by 85%, compelling RCI to replace them with material from CBC. Not surprisingly, audience figures dropped by approximately 10 million weekly listeners in 1989 to 5 million in 1991.

The Committee regards Radio Canada International to be an essential international service through which Canadian perspectives can be shared with the world. It agrees with the recommendation made by the Senate Committee and for this reason:

RECOMMENDATION 7.6:

The Committee recommends that the appropriate department review the mandate of Radio Canada International, with a view to identifying the necessary resources required to strengthen its services.

TV5

With concerted efforts and funding support from five governments (France, Switzerland, Belgium, Quebec and Canada), TV5's international French-language television network has experienced remarkable growth since its beginnings in 1984. TV5 covers almost the entire globe, reaching 65 million households by cable or satellite. It is recognized as one of the world's foremost satellite-based networks and is considered by many to be one of the greatest collaborative achievements of the international French-speaking community.[23]

TV5's service areas include: Quebec-Canada, Africa, Latin America, Asia, the United States, Europe (France/Belgium/Switzerland; non-francophone) and the Middle East. In Canada, TV5 Quebec-Canada is licenced as a not-for-profit corporation. Although the majority of its programming originates from France, Belgium, Switzerland and certain parts of French-speaking Africa, TV5 operates in Canada with a Canadian licence and is required to carry 15% Canadian content.

The network — which has been in operation in Canada since September 1988 — had an overall budget of $65 million in 1996. Two large corporations manage TV5: TV5 Europe in Paris and TV5 Quebec-Canada in Montreal. In 1996, Canada's total contribution to TV5 was $13.2 million, consisting of funds from the Government of Canada ($3.8 million), the Government of Quebec ($2.4 million) and cable revenues ($7 million).

In short, TV5 is a particularly unique public broadcaster. It provides Canadians with high-quality programming via a platform upon which Canadian values can be shared both domestically and internationally.

C. Provincial Educational Broadcasters

Although education is a provincial responsibility under the Constitution Act, 1867, federal interest in educational television surfaced in 1967 when Prime Minister Pearson's government proposed the creation of a national educational television agency, the Canadian Educational Broadcasting Agency (CEBA).[24] Due to opposition from the provinces, however, a bill that would have created the Agency was withdrawn just a few months after its introduction.

After long negotiations, federal and provincial governments agreed in 1970 to the terms and conditions for educational broadcasting in Canada. Order-in-Council 1970-496 stated:

> Where, within its jurisdiction, the Canadian Radio-Television Commission, on the direction of the Governor in Council, stipulates that at least one channel of a cable transmission facility be set aside for the use of a provincial authority for educational broadcasting or where the Canadian Broadcasting Corporation acts as agent of Her Majesty in right of Canada in providing a transmission facility for the use of a provincial authority for educational broadcasting ...[25]

Under this agreement, provincial educational authorities in Ontario and Quebec soon began to provide educational television.

In 1986, the Task Force on Broadcasting Policy noted: "it is inappropriate for federal authorities to define the meaning and scope of educational broadcasting since the content of education clearly falls within provincial jurisdiction."[26] That said, the Task Force expressed the view that "educational broadcasters in the provinces have a significant contribution to make to the Canadian broadcasting system beyond their borders." Furthermore, since "both English-speaking and French-speaking Canadian children are inadequately served by our broadcasting system" it recommended that educational broadcasters be invited to participate in TV Canada, a proposed satellite-to-cable public broadcaster.[28]

Although the creation of TV Canada was never pursued by Prime Minister Brian Mulroney's government, two references to educational programming were included in the revised *Broadcasting Act* of 1991:

> … the programming provided by the Canadian broadcasting system should … Include educational and community programming.
>
> … educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system.

Today, Canada has five provincial educational broadcasters: The Knowledge Network (British Columbia), Access (Alberta), Saskatchewan Communications Network, TVOntario/TFO and Télé-Québec.[29] This section provides background information on these services; where applicable, witness concerns or comments are included.

The Knowledge Network

British Columbia's provincial educational broadcaster — The Knowledge Network — was launched in January 1981. It is available to all households in British Columbia and averages more than one million viewers each week.[30] The network broadcasts a variety of educational programs for viewers of all ages, including general interest instructional programs in languages other than English.

Knowledge Network is a division of the Open Learning Agency, which provides educational resources, training, career counselling, and distance education for young and adult learners. Some of these courses combine traditional print resources with television technologies and other media, such as computer or telephone assistance for students.[31]

The network is "dedicated to providing quality, affordable television and other digital media products and services for the educational and cultural development of the peoples of British Columbia." To this end, it offers "a full range of quality, commercial-free television programming … [and] … offers expertise in a suite of online services including Webcasting, content production, and packaging of the Internet."[32]

When the Knowledge Network appeared before the Committee, its General Manager, Mr. Wayne Robert, noted:

> In the 10 years since Knowledge Network began pre-licensing Canadian programming, supply and demand has changed dramatically. … As a result, though these funds continue to support conventional and specialty broadcasters in the development of their industry, the amount of funding for programming directed toward the public interest is diminishing.[33]

With this in mind, the Knowledge Network recommended:

> [an] investment in productions that do not necessarily fit commercial mandates or meet only the needs of large national audiences. Exciting possibilities could include development or redirection of funds for specific regional production. New models could also involve subscription fees for provincial broadcasters in recognition of their role as regional broadcasters.[34]

Access Television

Access Television is Alberta's educational broadcaster and was, until 1994, a not-for-profit broadcaster. It is owned and operated by Learning and Skills Television of Alberta Ltd. (LTA), which is a private, for-profit corporation controlled by CHUM Limited (60%). Access was originally licenced in 1974 to produce educational programming for use by Alberta television stations. At its inception, Access was publicly funded and controlled by a Board of Directors appointed by the Lieutenant Governor in Council on behalf of the provincial ministries of Education and Advanced Education.

In 1994, provincial funding for Access Television was cut off. A year later, the CRTC approved LTA's acquisition of Access's assets and granted the station an educational broadcasting licence. In the process, LTA became the only privately owned, for-profit corporate enterprise in Canada licenced as a provincial educational broadcaster.[35]

Access Television is now funded primarily through the sale of commercial advertising time and program sponsorships. In addition, Alberta's provincial ministries of Education and Advanced Education purchase broadcasting time from Access to deliver educational and instructional programming.

Access broadcasts 24 hours a day and is available to all residents of Alberta. Daytime programming is directed at preschool and school-age children and includes programming intended to supplement the province's education curriculum. The prime time schedule features programming related to, and part of, the courses offered at post-secondary institutions in the province. Access also broadcasts general interest educational programming.

During its meetings in Edmonton, the Committee did not hear any concerns from witnesses with respect to the unique private-public partnership that Access has forged with the Alberta Government. In Vancouver, however, The Community Media Education Society told the Committee that:

> There is fear that the Knowledge Network, B.C.'s educational channel, may face a private takeover. That has happened with ACCESS in Alberta. It is hard to provide public education using private ethics. Far too often there are social costs down the road.[36]

That said, Ms. Jill Bonenfant, Director of Learning and Skills Television of Alberta, told the Committee in Edmonton that the private-public partnership:

> … has been very successful. … The partnerships and working relationships between ACCESS and the Ministry of Education and educational institutions in Alberta have been outstanding. We have gone a long way since privatization to working with post-secondary institutions and with the government. The key factor in the privatization of ACCESS was this partnership — a private-public partnership with the government.[37]

The Saskatchewan Communications Network

The Saskatchewan Communications Network (SCN) received its educational broadcasting licence in 1991. It distributes a variety of educational, informational, and cultural programs, which are available to all residents of the province through cable, wireless cable, and direct-to-home services. According to its 1999-2000 *Annual Report*, the SCN's broadcasting network has a potential viewership of 700,000 people.[18]

The SCN is comprised of a broadcasting network and a training network. The broadcasting network has two educational programming streams: the first is aimed at primary and secondary school children, while the second is aimed at adult learners. The bulk of its programming is in English, although a limited number of programs are produced in the Metis language.

Through its training network, the SCN works with Saskatchewan's post-secondary institutions to provide distance education to over 150 communities, using one-way video and two-way audio satellite services. Courses in Cree and French are also offered. All told, it delivers over 5,000 hours of curriculum support and informational programming on its broadcast network, and 3,000 hours of live, televised for-credit high school and post-secondary classes on its training network each year.

When SCN addressed the Committee it noted that:

> In the *Broadcasting Act*, the Canadian broadcasting system is required to provide alternative television programming services, where necessary, to ensure the full range of programming contemplated is made available throughout the system. In provinces and regions not currently served by any provincial or alternative regional program service.[19]

For this reason, argued SCN, regional broadcasters would benefit from subscription fees and a new production fund that targets regionally specific information programs. As SCN's President and General Manager, Mr. David Debono explained:

> The fund must have a way to ensure that the regions with the greatest needs, the lowest population densities, and the highest cost of service per unit of volume have a priority access. The fund must also be designed to help meet your needs for informational

> programming, and not just become a way to subsidize the cost of a national broadcaster's local franchise.[40]

TVOntario/TFO

The Ontario Educational Communications Authority, TVOntario, was launched in 1970. Its English-language service, TVO, is available to 98.5% of all Ontario households, while its French-service, TFO (which was launched in 1987), is available to approximately 77% of all Ontario households.[41]

TVO's mandate is to "to initiate, acquire, produce, distribute, exhibit or otherwise deal in programs and materials in the educational broadcasting and communications fields." It also seeks "to foster lifelong learning via all available media technologies." Approximately 70% of TVO and TFO broadcasting schedules are devoted to educational programming; this includes a "virtual classroom" that provides real-time, virtual interaction, including event footage and expert interviews, as well as distance education, and curriculum resources for educators.

TVOntario has been an extremely successful undertaking, winning more than 850 awards for its programming since its inception. In 2000-01, it had total revenues of $66 million, including a provincial grant worth $50.2 million. Using these resources, more than 1,500 hours of in-house programming was produced by its English- and French-language networks in 2000-01.

TVOntario's French-language service is especially unique in that it is the only provincial educational network authorized to collect a subscriber fee for delivering programming services to other provinces — namely New Brunswick and Quebec. That said, not all households in Quebec can receive TFO. As TFO's General Manager, Ms. Claudette Paquin, told the Committee:

> Although TFO is currently accessible to nearly 1 million Quebeckers, the fact remains that we are still shut out of most of this market, thereby confirming the anomaly of our position in the Canadian television landscape. Indeed, TFO is the only French-language network to come out of the francophone Canadian minority community and the only French-language network that currently is unable to distribute in the majority francophone market.[42]

In 2000, the CRTC rejected an application from TVOntario, which proposed mandatory carriage of TFO in Quebec on a fee-per-household basis. In its Decision, the CRTC noted: "Viewers in Quebec, who already receive the educational service Télé-Québec, should not be obliged to pay for a second educational service that originates in another province."[43]

TVOntario feels otherwise. It explained to the Committee that:

> The rules of the game have changed and the [Act] must be amended in order to establish what we refer to as a level playing field for TFO. Market forces alone will not do this and the progressive weakening of TFO will ultimately lead to less diversity in the francophone voices in this country.[44]

Several witnesses shared this perspective. Senator Jean-Robert Gauthier, for example, claimed that the Commission has been "affected by commercial interests."[45] Another organization, Impératif français, added that TFO should be "available free-of-charge to all subscribers on the basic package."[46]

Taking these points a step further, the Commissioner of Official Languages told the Committee that access to educational programming should be used to promote linguistic duality. Ms. Dyane Adam explained:

> One way to do this would be to promote free Canada-wide broadcasting of the provincial education television networks, such as Télé-Québec and TFO in French, and TVO, Access, SCN and Knowledge in English.... This major change would encourage the habit of listening to Canadian broadcasts in both official languages from a young age everywhere in Canada.[47]

For its part, Quebec's educational broadcaster, Télé-Québec, was more concerned with economic survival in today's competitive environment. Mr. Mario Clément told the Committee:

> TFO is a television station which provides youth, documentary, cultural or magazine-type programming. This is exactly the same market segment as Télé-Québec. Consequently, this is why we are taking issue — given the current market — with competition between two television stations offering the same type of program in the same market.[48]

For this reason, Télé-Québec would much prefer "greater cooperation with TFO in terms of establishing partnerships and co-producing programming, rather than competing with TFO for the same market."[49]

Notwithstanding Télé-Québec's position[50] on this matter, TVOntario recommended to the Committee that the *Broadcasting Act* be amended to include the principle that "channels from minority francophone communities … be given access to the majority [francophone] market, namely the Quebec market, so as to facilitate their existence and development."[51]

Télé-Québec

Télé-Québec, known as Radio-Québec until 1996, began operation in early 1968, producing French-language educational programs for broadcasters such as Télémedia and the CBC. Four years later, the service began to distribute its own programs to viewers in Montreal and Quebec by cable. In 1975, Télé-Québec, with television stations in Montreal and Quebec, launched its own television network. By 1980, three more stations had been added in Hull, Val-d'Or and Rouyn-Noranda.

Télé-Québec receives more than three-quarters (78.5%) of its revenues from the province of Quebec. Remaining revenues are earned from commercial advertising. In 2000-01, its total revenues were $68.1 million, of which $53.4 million were a provincial grant.

Over time, Télé-Québec's mandate has grown to include the production and distribution of audio-visual materials. Its objectives are:

> … to operate an educational and cultural broadcasting undertaking to ensure public access to its products by all broadcasting means. The Société may also operate a service for the production and distribution of audio-visual, multimedia and television broadcast material, including derivative merchandise and related documentation.[52]

In 2001-02, Télé-Québec enjoyed an average audience share of 2.8% in the province of Quebec.[53] The network provided programming in four areas: youth, formal education, cultural and information (public affairs, history and society, science and nature, and long-form documentaries). It also delivered some performing arts programming. In collaboration with the provincial Ministry of Education, the network also maintains a collection of publicly accessible educational video and multimedia materials.

Télé-Québec told the Committee that it "invests 85% of its programming budget in producing and broadcasting Canadian programs and 70% of that same budget goes to private enterprise production."[54] Co-productions and acquisitions represent 91% of Télé-Québec's original programs, and 92% of its entire program schedule.[55]

Aside from Télé-Québec concerns over competition with TFO, its main concern was to "obtain the rights for the distribution of [its] programs for educational and non-commercial markets."[56] It would like educational broadcasters to have co-ownership of copyright (along with the independent producers) for foreign distribution since this "could lead to stimulating business partnerships."[57]

Proposed Action

Witnesses who raised educational programming issues identified two main problem areas. First, educational broadcasters receive insufficient and unequal distribution across Canada. Second, certain regions simply do not have the needed population or resources to support an educational service broadcaster. The Committee is gravely concerned by these circumstances; for these reasons, it is of the firm belief that the distribution of such programming, given its importance to the public interest, merits improved availability. Accordingly:

RECOMMENDATION 7.7:

The Committee recommends that the CRTC permit the national distribution of all English and French provincial educational broadcasters.

D. Conclusion

The Role of Not-for-Profit Broadcasters

In light of the above discussion, the Committee recognizes that it is important to draw the line between public, not-for-profit and profit-driven broadcasters. Apart from the not-for-profit and educational broadcasters described above are many distinctly Canadian for-profit services that could just as easily have been included. For example: the Issues Channel, Bravo!, Showcase, Historia, The Discovery Channel, Canal Vie, History Television, the Miracle Channel, Life Network, Women's Television, and Canal Vrak are all channels that strive in some way to inform, educate and entertain. Indeed, many of these channels rebroadcast syndicated CBC and Radio-Canada programming.

Furthermore, some for-profit, programming services have become extremely adept at delivering what could easily be defined as public broadcasting. Toronto's multicultural channel, CFMT, for example, is noteworthy in its public service.[58] While it may show popular programs such as *The Simpsons* and *Frasier* to cross-subsidize its other programming, it also broadcasts 60% of its line-up in at least 15 different languages to more than 18 different cultures, including newscasts in Italian, Portuguese, and Cantonese.

Thus, if public broadcasting in the public interest rests somewhere in the words to inform, educate and entertain, it is clear that Canada's *Broadcasting Act* has successfully helped foster an impressive group of Canadian broadcasters that — in one way or another — fulfill these expectations.

The Committee, while recognizing this reality, wishes to acknowledge the special contribution made by Canada's not-for-profit broadcasters. Accordingly:

RECOMMENDATION 7.8:

The Committee recommends that the *Broadcasting Act* be amended to recognize not-for-profit public broadcasters as an integral part of the Canadian broadcasting system.

Channel Placement

An issue that was raised by witnesses on several occasions was how to distribute public broadcasting services and programming. This section describes and discusses a proposal raised by VisionTV: the creation of a mandatory "foundation tier" for the distribution of key Canadian networks — particularly Canada's public and not-for-profit broadcasters. This "foundation tier" has frequently been referred to as a "green space."

At present, CRTC regulations require BDUs to carry specific services as part of their basic package, but it does not regulate channel placement. This means that broadcasters have very little control over their placement in BDUs' channel line-ups. APTN, which earns a percentage of its revenues from viewer-dependent advertising, indicated that a higher channel placement harms revenues and viewership totals. As Mr. Ron Nadeau explained:

> In a perfect world, we would like every Canadian, whether Aboriginal or non-Aboriginal, to be able to watch our programs. One of the issues that we highlighted was the fact that we have a problem with channel placement. Of the viewers that we surveyed, the non-Aboriginal audience, 70 percent of them didn't know we existed. The problem is, we were granted mandatory carriage in our network nationally, but with the carriage we've been given … how does that get our programming out to Canadians such as you? So … channel placement holds the key to many doors. It would unlock many doors for us.[59]

According to VisionTV's President, Mr. Bill Roberts, the solution to this problem is to create an "oasis within the market-driven environment" by requiring BDUs to cluster specific Canadian networks in a "foundation tier" on the lowest possible channels numbers available.[60] The rationale for such a move is that "public service broadcasters require carriage on low-price, high-penetration tiers … to remain economically viable, [otherwise t]here may be little hope for their survival in an 'à la carte' universe,"[61] in which subscribers pick and pay for programming on a channel-by-channel basis.

VisionTV firmly believes that the foundation tier proposal may well offer a number of potential benefits for the broadcasting system. These include: a reduction in public service channel costs as they would "no longer be compelled to devote their modest resources to purchasing space on the dial and undertaking major communications campaigns to reach viewers",[62] an assurance that "shelf space" exists for Canadian content within the system; a smaller basic package that would cost subscribers less; the opportunity for BDUs to charge market-driven prices for formerly available U.S. over-the-air services (ABC, CBS, NBC, PBS); a reduction in Canadian content requirements for privately owned Canadian broadcasters; and, an increased level of foreign ownership for privately owned Canadian broadcasters.[63]

But which broadcasters should be included in a foundation tier? Such a tier, in their view, would include broadcasters who: are licenced specifically to address public policy goals; air a minimum of 60% Canadian content; spend a minimum of 50% of their revenue on Canadian programming; are wholly owned by Canadians or "at least be under supra-majority control by Canadians"; are controlled by not-for-profit corporations, collectives, partnerships, co-operatives or charitable institutions.[64] Local community channels could also be included in the foundation tier.

One witness argued that public and not-for-profit broadcasters should assume the burden of the foundation tier, in the name of public service: "... economic viability should be bolstered by requirements that private sector broadcasters contribute funding, while cable operators are mandated to carry the signals."[65] Other interested parties also see the creation of a new tier as a new income stream. The Independent Film and Video Alliance (IFVA) asked that the Committee "consider special status for the educational and not-for-profit broadcasters (Knowledge Network, SCN, TVO and VisionTV) ... the IFVA proposes that Heritage require the CTF to change its guidelines regarding the value of licence fees from these broadcasters."[66] In other words, the IFVA would like larger government subventions.

Other witnesses were far less receptive to the foundation tier initiative. The CBC, for example, acknowledged the arguments in favour of a "green space" for public sector broadcasting, but did not accept the view that the Corporation's services should be included in this category. As the CBC's President, Mr. Robert Rabinovitch, explained:

> With respect to platform placement, we are created by an [A]ct of Parliament. We are the distinct public broadcaster. We have historically been in partnership with the private sector. I am not opposed to Vision and APTN and others trying to create what they call a "green space". We are a green space, and we will continue to be a green space. I think we should be handled quite separately from

> those specific specialty channels. I don't deny their argument, but I don't think it encompasses us.[67]

If the CBC were put on a "green space," it would be segregated from the other major networks. Viewers who are not interested in foundation services might begin their television experiences on channel 5, 10, or 20 to avoid it — thus marginalizing the public broadcaster. Such is the risk of creating a "foundation tier." However, those who have much lower ratings than the CBC and who suffer inhospitable channel placement are warm to the idea.

Representatives of the Canadian Cable Television Association (CCTA) were opposed to the concept of a foundation tier and had:

> … a hard time understanding the advantages of this so-called green space concept. At the end of the day, the services on this list are all carried and offered by cable companies already. It's not a question of services that aren't available today that someone thinks would be a good idea to add. All the services are there.[68]

Furthermore, explained the Association's President, Ms. Janet Yale:

> One of the things we've learned is that you can't change things for customers…. If the services are already there and offered, why would you move them around to put them together? I don't see this as an advantage. Secondly, and most fundamentally from a customer perspective, I would say that the most you can do is make sure services are available. … just because something must be carried, that doesn't make it must watch or must take. In the digital environment, this is more and more true. You can make something available to customers; you can't make them watch it and you can't make them pay for it if they don't like it any more. Those days are gone.[69]

Mr. Roberts believes that it is justifiable to burden the public as a whole to benefit civil society. He writes that "[w]e may never need open-heart surgery, but we don't object to putting our tax dollars into the health-care system."[70] Ms. Yale, however, argued that stronger promotional efforts would be a much more sensible solution:

> … what we really have to do is promote — promote services and the value of those services, promote the Canadian services aggressively and continue to make sure the costs of funding productions of our Canadian stories in this country are covered. We

> do this. We make this contribution through the 5% of our gross revenues that goes to the Canadian Television Fund. It's about promotion, not about restriction.[71]

Mr. Chris Frank, Bell ExpressVu's Vice-President of programming and government affairs told the Committee that, in his view, the foundation tier already exists. He said:

> ... we're quite familiar with the so-called "foundation tier"...that people like those at VisionTV have proposed, and as I said before, we're very pleased to tell you that we have this foundation tier embedded within our basic service. So we are in fact converts. We're there already, and we have been essentially since we launched our service. We made a commitment to an all-Canadian basic service, with certain key elements such as Vision, such as educational broadcasters, CBC, the national private networks, the Weather Network, Newsworld, RDI, and CPAC — in other words, bringing information, public affairs, and basic entertainment services to Canadians for an affordable price.[72]

In light of these concerns, the Committee recognizes that the financial advantages and drawbacks of altering channel placements for broadcasters, audiences and, in particular, BDUs is an issue that must be carefully explored. That said, it is important to note that the CRTC has recently observed that it:

> ... considers that the introduction of the foundation tier concept would be disruptive for consumers and would have major technical and operational implications for distributors and programming service providers. Furthermore, it would represent a major change to the regulatory framework relating to basic service. The Commission is, therefore, of the view that the foundation tier is neither practical nor appropriate.[73]

The Committee has carefully considered various aspects of this argument as well as the perspectives of witnesses who raised this issue and is of the view that the question of channel placement will likely be resolved by the transition to digital technology. In the meantime, however, the Committee disagrees with the CRTC that "the foundation tier is neither practical nor appropriate." For this reason:

RECOMMENDATION 7.9:

The Committee recommends that the CRTC be directed to ensure that audiences have fair access to not-for-profit public broadcasters on broadcasting distribution undertakings.

Endnotes

[1] Peter Desbarats, "The Future of Public Broadcasting: Distinction or Extinction", Prepared for the House of Commons Standing Committee on Canadian Heritage, 31 August 2002.

[2] Public Notice CRTC 1998-8.

[3] Aboriginal Peoples Television Network, Brief, p. 9.

[4] While it committed to provide 90% Canadian content in its application to the CRTC, in early 2001 the CRTC approved APTN's request to reduce this level to 70%. APTN informed the Committee that it had exceeded its 70% commitment by 15%.

[5] Alex McGregor, *Report on the Needs of Northern Aboriginal Broadcasters*, Department of Canadian Heritage, June 2000.

[6] Meeting of the Standing Committee on Canadian Heritage, 1 March 2002.

[7] Aboriginal Peoples Television Network, Brief p. 15.

[8] According to Mr. Compton, during "the initial years of the NNBAP, broadcasters received up to $12.5 million per year in funding" but beginning in 1991, NNBAP production funding declined over a number of years, to "an all-time low of $7.9 million" in 1999/00, even though the NNBAP "now provides a total of approximately $3.7 million to seven Aboriginal broadcast organizations per year." That said, the CTF also allocates 1% of its funding to Aboriginal productions.

[9] Meeting of the Standing Committee on Canadian Heritage, 1 March 2002.

[10] Gary Farmer, President, Aboriginal Voices Radio Inc., Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.

[11] No CRTC-granted licence was necessary. Public Notice CRTC 1992-96 allowed for distribution of parliamentary proceedings without one.

[12] Cable Public Affairs Channel Inc., CPAC Statement of Control, 18 February 2002.

[13] Floor sound refers to the language being spoken by a person at a particular time. If a speaker is speaking French, the floor sound will be French; if a speaker is speaking English, the floor sound will be English.

[14] Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[15] Canadian Radio-Television and Telecommunications Commission, Public Hearing, 9 May 2002 (Transcript Volume 4, p. 1042-1043).

[16] *Role and Responsibilities of the Canadian Radio-Television and Telecommunications Commission in Developments in the Area of Official Languages in Canada*, Report of the Standing Committee on Official Languages (Ottawa: House of Commons, 2003).

[17] Ibid.

[18] See Decision CRTC 87-900.

[19] RCI Action Committee, Brief, p. 2. RCI receives $15.52 million annually in dedicated funding for its operating budget under the terms of a contribution agreement (Canadian Broadcasting Corporation, Annual Report 2000-01, p. 54).

[20] For example, the 1986 Task Force on Broadcasting, the 1992 Report of the House of Commons Standing Committee on Communications and Culture, and, the 1994 Report of the Standing Senate Committee on Transport and Communications on the Mandate and Funding of Radio Canada International.

[21] Report of the Standing Senate Committee on Transport and Communications on the Mandate and Funding of Radio Canada International (Ottawa: Senate of Canada.), p. 15.

[22] RCI Action Committee, p. 2.

[23] www.canadianheritage.gc.ca

[24] In July 1966, the government tabled a White Paper on broadcasting which proposed, among other things, the creation of a new federal agency to operate educational broadcasting facilities with programming under provincial control. The Throne Speech of May 1967 also promised that the government would act in the area of educational broadcasting.

[25] Government of Canada, "Direction to the Canadian Radio-Television and Telecommunications Commission re: Reservation of Cable Channels," Order-in-Council P.C. 1970-496, *Canada Gazette*, Part II, Vol. 104, No. 7, 18 March 1970.

[26] Report of the Task Force on Broadcasting Policy (Caplan-Sauvageau) (Ottawa: Minister of Supply and Services Canada, 1986), p. 339.

[27] Ibid., p. 341.

[28] Ibid., p. 351.

[29] There are two educational programming services that are not provincial in scope: Canadian Learning Television (CLT), a specialty television service, and Cable in the Classroom (CITC), a service provided to educators across Canada.

[30] www.knowtv.com.

[31] www.access.ola.bc.ca.

[32] Ibid.

[33] Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[34] Ibid.

[35] Decision CRTC 95-472.

[36] Richard Ward, Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[37] Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[38] www.scn.sk.ca.

[39] Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[40] Ibid.

[41] www.tvontario.org.

[42] Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[43] Decision CRTC 2000-72.

[44] Claudette Paquin, Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[45] Meeting of the Standing Committee on Canadian Heritage, 9 April 2002.

[46] Meeting of the Standing Committee on Canadian Heritage, 16 April 2002.

[47] Meeting of the Standing Committee on Canadian Heritage, 9 April 2002.

[48] Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[49] Ibid.

[50] Télé-Québec's position is to some extent undermined by its own corporate ambitions. Since 1995, the network has been obtaining national broadcasting rights for its programming and, in October 2000, it told the CRTC that it wanted its signal offered cost free to francophone communities across Canada.

[51] Claudette Paquin, Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[52] Decision CRTC 2001-256.

[53] September 2001 — August 2002, all day, all persons aged 2+. Source: Neilsen Media Research.

[54] Jacques Lagacé, Director Institutional Affairs, Télé-Québec, Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[55] Télé-Québec, Annual Report — 2000-2001, p. 12.

[56] Jacques Lagacé, Director Institutional Affairs, Télé-Québec, Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[57] Ibid.

[58] In recognition of its public service contributions, the National Archives of Canada has entered into an arrangement with CFMT to store its footage as an example of the Canadian ethnocultural perspective in broadcasting.

[59] Meeting of the Standing Committee on Canadian Heritage, 1 March 2002.

[60] Meeting of the Standing Committee on Canadian Heritage, 25 April 2002.

[61] Ibid.

[62] Ibid.

[63] See Chapter 11 for more on foreign ownership.

[64] Ibid.

[65] Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[66] Ibid.

[67] Meeting of the Standing Committee on Canadian Heritage, 14 March 2002.

[68] Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[69] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[70] Bill Roberts, "We Should Reserve Electronic Green Space for Public-Service Broadcasters," *Policy Options*, November 2001, p. 76.

[71] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[72] Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[73] Public Notice CRTC 2002-49.

THE STATE OF THE SYSTEM

Chapter 8

The Private Sector

> **We are trying to do something that is not easy. The natural pressures are against us; the flow runs north and south and we are trying to make some part of it run east and west. The forces of economics are against us too, as they have been against many odd Canadian dreams and aspirations in the past. But this is one we had better work at, for it is really important if we are to keep a Canadian identity and culture; if there is, in fact, to be a Canadian force in the world.**
>
> ***Royal Commission on Broadcasting, 1957***

This chapter describes key private sector elements of the Canadian broadcasting system under five main headings: independent production, radio, television, distribution and advertisers. Following each section, a review of what the Committee heard and proposed solutions are provided.

For the purposes of this discussion it is important to note relevant sections of the *Broadcasting Act*. Section 3 states that private broadcasters should:

> (s) to an extent consistent with the financial and other resources available to them,
>
> (i) contribute significantly to the creation and presentation of Canadian programming, and
>
> (ii) be responsive to the evolving demands of the public.

As for broadcasting distribution undertakings (i.e., cable, satellite and multi-point distribution), these entities should:

> (i) ... give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,
>
> (ii) ... provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,
>
> (iii) ... provide reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

And, finally, for the independent production sector "the programming provided by the Canadian broadcasting system should include a significant contribution from the Canadian independent production sector."

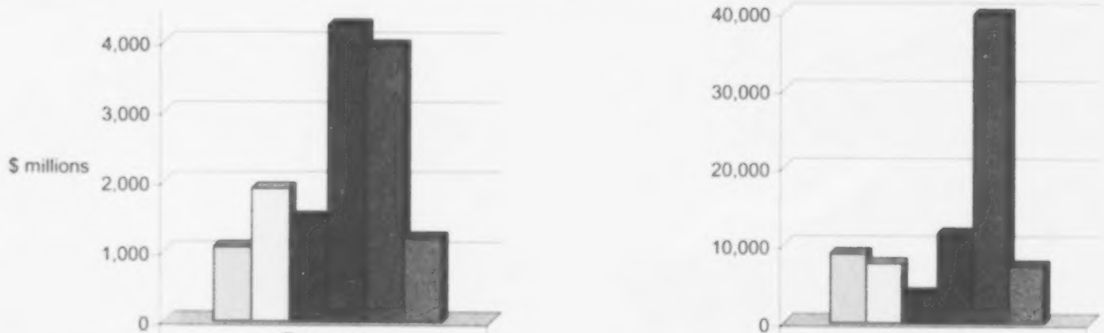
If it is possible to offer a short summary of what private sector witnesses told the Committee, the key element would be that they are trying to run a business in an extremely competitive world and must at a minimum break even or, over time, make a profit. In general, these witnesses were comfortable with the private/public mix in Canadian broadcasting. They all agreed that government should be involved, but many called for changes in CRTC regulations and practices as well as the way government manages particular programs.

A. The Size and Scope of the Private Sector

Before proceeding, it is important to point out the size and scope of the private broadcasting sector in Canada. Figure 8.1 shows the total revenue and employment for broadcasters and distributors in 2001 (the most recent year for which a consistent dataset is available). This figure shows that private broadcasting, distribution and independent production accounted for nearly 72,000 jobs for Canadians and generated $12.7 billion dollars in revenues.

Figure 8.1 also provides some perspective on the public/private split in the Canadian broadcasting system. In fiscal 2000 the CBC/SRC had operating revenues for its main channels of about $1.2 billion dollars. Approximately $800 million of this came from its parliamentary appropriation and about $350 million came from advertising and program sales. A further $116 million was from cable and satellite subscription fees for the Corporation's specialty services. Total CBC employment was 7,340.

Figure 8.1 Revenues and employment in Canadian broadcasting, 2001



	Revenues
□ Private radio	1,067
□ Private conv.	1,903
■ Pay / spec.	1,490
■ Distributors	4,246
■ Ind. production	3,948
■ CBC / SRC	1,200

Total Revenues
Excluding CBC/SRC: $12.7 million
Including CBC/SRC: $13.9 million

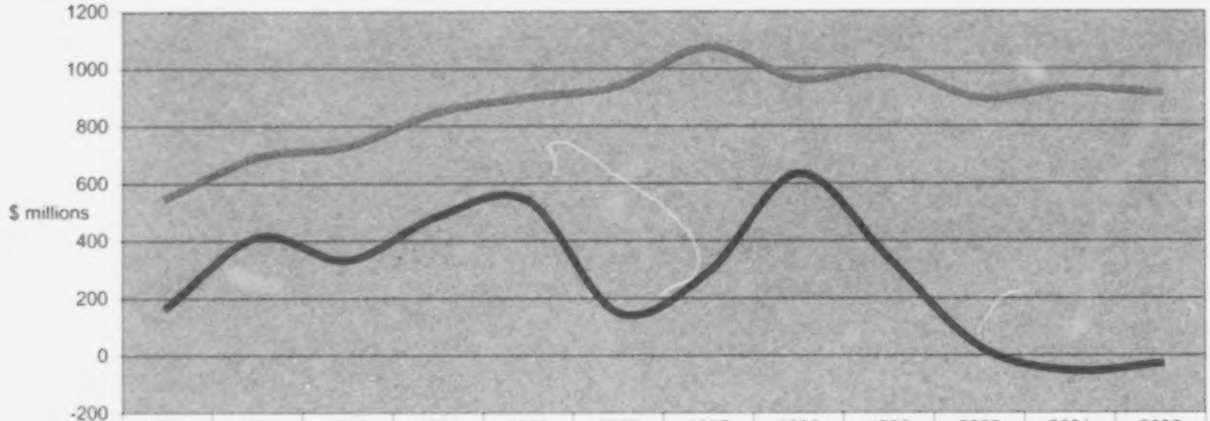
	Employment
□ Private radio	8,954
□ Private conv.	7,685
■ Pay / spec.	3,835
■ Distributors	11,556
■ Ind. production	39,780
■ CBC / SRC	7,340

Total Employment
Excluding CBC/SRC: 71,810
Including CBC/SRC: 79,150

As for independent production, the Canadian Film and Television Production Association reports that total production activity in Canada in 2001 was about $5 billion, of which about $3.9 billion was on television production. Direct employment in the Canadian production industry was estimated to be about 51,000, which, if pro-rated by the relative contribution of Canadian television to total production, represented employment for about 39,780 Canadians.

Another way to get a sense of the private sector is by looking at its overall profitability since the last revisions to the *Broadcasting Act* in 1991. Figure 8.2 shows that profits before taxes (PBT) were volatile during this period, ranging from profits of $635 million in 1998 to losses before taxes of $51.9 million in 2001. More details on how these profits/losses vary among key elements of the private sector (i.e., radio, television and distribution) are presented in subsequent sections of this chapter.

Figure 8.2 Total profits in Canadian broadcasting, 1991-2002



	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
PBIT	552.8	692.2	730.4	849.6	900.3	940.4	1076.1	964.3	1001.3	898.5	933.4	916.7
PBT	171	414.8	333	486.4	540.9	150.6	291.4	635	338.8	31.6	-51.9	-27.3

PBIT = Profits Before Interest and Taxes (and adjustments)
PBT = Profits Before Taxes (but after adjustments)

B. Independent Production

It is important to remember that the main purpose of the Canadian broadcasting system is to support the production and distribution of programs. There are two principal sources of programming content in the Canadian broadcasting system — programs such as news and sports generated by broadcasters, and categories such as drama, documentary and children's shows, some of which are produced by broadcasters, but many of which are developed by independent producers.

People in the industry often make a distinction about whether something was produced in-house or by an independent producer. For example, during 2001-02, the popular French-language téléroman *Virginie* was produced in-house while the science fiction series *Lexx* was produced independently.

In the early years of broadcasting most production was carried out in-house and there was very little independent production in Canada. This was especially true between 1952 and 1962 when the CBC and Radio-Canada were the only Canadian networks. There were three main reasons for this. The CBC and Radio-Canada followed the approach used for radio where shows were developed in-house; there was no film production centre (e.g. a Canadian equivalent of Hollywood) from which Canadian programming could be obtained; and, there were no regulations against producing all content in-house.

When CTV began operation in 1961 it quite naturally followed the same pattern, largely because there was no independent production sector from which to obtain material. CTV's production of material, however, was more limited than that of the CBC with a concentration on news and sports. This opened the door for some independent production, particularly game shows and some drama (e.g., *It's Your Move, The Littlest Hobo*).

On the French-language side it was more difficult to import material, thus forcing the French private broadcaster Télé-Métropole to operate as a producer from its launch in 1960. For this reason, Télé-Métropole (which became part of TVA in 1971) quickly became the leading source of programming for Canada's French-language audiences.[1] Examples of programming produced by Télé-Métropole include Quebec's first sitcom, *Cré Basile* (1965-68) and *Lecoq et fils* (1967-68). Shows produced under the TVA banner have included: *Symphorien* (1974-78), *Les Brillant* (1979-80), and situation comedies *Dominique* (1977-80) and *Peau de banane* (1982-87).

A full-fledged independent production sector began to develop with the federal government's creation of Telefilm Canada in 1983 and the CRTC requirement that the CBC, as a condition of licence, purchase at least some of its programming from outside sources.[2] To receive funding, projects were expected to meet various Canadian content criteria. Telefilm administered two funds — one for feature films (the Feature Film Fund — FFF) and one for broadcasters (the Canadian Broadcast Program Development Fund — CBPDF).

As explained in Chapter 5, there are now several public and private funding sources for Canada's creators, among these the Canadian Television Fund (CTF), Telefilm Canada, the Department of Canadian Heritage, broadcasting distribution undertakings, provincial or territorial governments and broadcast licence fees. For example, since its creation in 1997, the CTF has supported more than 2,228 projects; that is, about 11,500 new hours of Canadian programming.[3]

With the creation of Telefilm and the requirement that CBC buy material from outside sources, the independent production sector in Canada began to flourish, producing large numbers of popular programs. Examples include: *Anne of Green Gables, Caserne 24, Kids in the Hall, Diva, Babar, KM/H,* and *The Boys of St. Vincent*. Shows such as *Trudeau* and *Le dernier chapitre* are more recent examples of successful independent productions.

Two other factors also helped foster the growth of Canada's independent production sector. First, the CRTC has licenced dozens of specialty channels that need special content (e.g., music or science programs). Second, the CRTC has maintained Canadian content requirements for these new services. While these requirements vary by channel, they, by default, create a demand for Canadian programming that can be met realistically only by an independent production sector. Indeed, it would be extremely inefficient to have every specialty channel set up its own production facilities.

At the same time that the Canadian market for independent productions has expanded, specialty services such as The Cartoon Network and Nickelodeon — were also being launched in the United States, each with similar needs for specialized content. During the 1990s, Canadian independent producers met at least some of this demand, thus making it easier to obtain a portion of their funding support from outside Canada.

The ability of independent producers to attract funding from outside Canada has been enhanced by the rise of treaty co-production activity. Canada has signed treaty co-production agreements with many countries and is the world's leading co-producer. In 2001-02, for example, treaty co-productions involving Canadian production houses numbered 107, and were worth $793 million (of which $432 million was spent in Canada).

International Treaty Co-productions

Co-productions are binding international legal agreements between governments designed to assist producers by reducing the risks of production through the pooling of creative, technical and financial resources. Canada has 61 official audiovisual co-production treaties with a variety of countries, most of which are for film and television productions.

Canadian Successes in Animation

The Oscar awarded in 2003 to Toronto's Alias|Wavefront for *Maya*, their 3D animation software, is the most recent of many honours for Canadian animation.

The best known of the early animators are the NFB's Norman McLaren, who first won an Oscar in 1952 for his film *Neighbours*, and Radio-Canada's *Frederic Back*, a two time winner for *Crac!* and *The Man Who Planted Trees*. Co Hoedeman also won an animation Oscar for his stop-motion *Sand Castle*. These pioneers have inspired many others through their innovative use of new techniques to support their creative vision.

While most animation is still made with traditional techniques, the digital age brought with it a flood of innovation. Many point to the eight-minute short film, *Tony de Peltrie* (1985) as a starting point. *Tony* was the first computer-animated character who could express emotion, and his creators, Philippe Bergeron and Daniel Langlois, went on to develop new software tools used widely throughout the production industry.

Bergeron's Digits 'n Art, for example, created *flesh*, a 3D paint software application, and *LIFEsource*, a complete motion capture system. Langlois went on to found Softimage, which came to world attention through its use in *Jurassic Park*. Discreet Logic was created by two veterans of Softimage: their tools, which also won an Oscar, were central to many motion pictures, including *Armageddon* and *Titanic*. But these are only three among a host of development companies including Vertigo, Side Effects, and Toon Boom technologies, that are estimated to have produced over half the animation software used in Hollywood.

Canada's educational institutions have also had a role to play in fostering this creativity. Four graduates of the University of Waterloo have received technical Oscars for their part in the creation of three widely used animation packages: *Prisms*, the *Alias PowerAnimator* system, and the *Marionette 3D system*, used in the creation of the first, three-dimensional computer animated feature film, *Toy Story*.

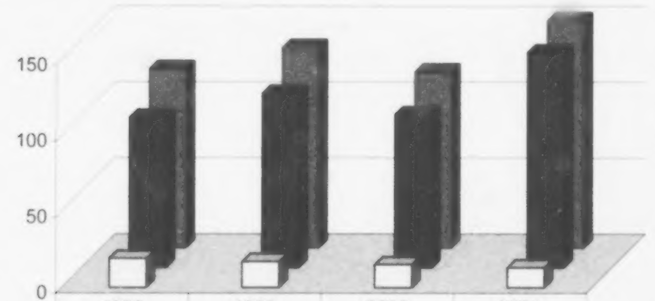
Recognition as a treaty co-production grants a production domestic status (i.e., it is a national product) in each jurisdiction. In Canada, this means that a co-production is considered "Canadian Content." Co-production status gives Canadian producers access to federal tax credits and public support (e.g., the Equity Investment Program envelope of the Canadian Television Fund).

The Department of Canadian Heritage is responsible for negotiating co-production agreements, while Telefilm Canada administers these agreements on behalf of the Government of Canada.

But there are advantages and disadvantages with co-productions. The main advantage is that they can make additional funds available and promote access to foreign markets. On the other hand, they are sometimes very difficult to manage; there are often conflicts over creative control; and, the final product can be culturally non-specific or of little interest to audiences on one side of the partnership. Despite these problems, co-productions have become an important source of additional support to Canadian production companies.

Figure 8.3 gives some sense of the size of Canada's private production sector. As can be seen, Canada's production sector grew notably between 1998 and 2001, from 118 companies to 155. Most of this growth was among smaller companies with revenues of less than $25 million.

Figure 8.3 Total number of Canadian independent production companies by level of expenditures, 1998-2001



	1998	1999	2000	2001
□ > $25 million	19	17	15	13
■ < $25 million	99	115	101	142
▨ Total	118	132	116	155

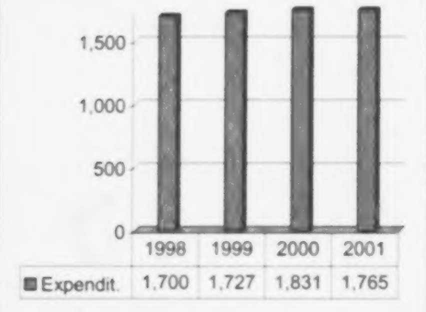
The year before *Toy Story*, however, the first computer-generated 3D animated series for television was aired: ***Reboot***, produced by Mainframe Entertainment in Vancouver, used SoftImage and in-house tools. ***Reboot*** was not just a technical achievement — it also boasts a clutch of Canadian Geminis and international awards for its creative accomplishments.

Other institutions training animators include the Banff Centre for the Arts, the Emily Carr Institute, the National Animation and Design Centre, Centennial College and Sheridan College. Sheridan alumni include such luminaries as Steve Williams (*Jurassic Park, The Mask*, and the T1000 cyborg in *Terminator*), James Strauss (*Dragonheart*) and John Minnis (Academy Award for *Charade*).

With this history of creative and technical success, it comes as no surprise that, despite the recent downturn, Canada is the largest exporter of animation in the world. Nelvana's series have been seen in some 160 countries; Cinégroupe's in 125, while Mainframe's output has been seen in 80 countries and in 13 languages. Companies like these and Toronto's Decode, Montreal's Cinar, and Ottawa's Funbag, have, over the years, established a core of expertise and creativity that have given the Canadian animation industry a stunningly successful international profile.

Figure 8.4

Total expenditures in Canada's independent production sector, 1998-2001



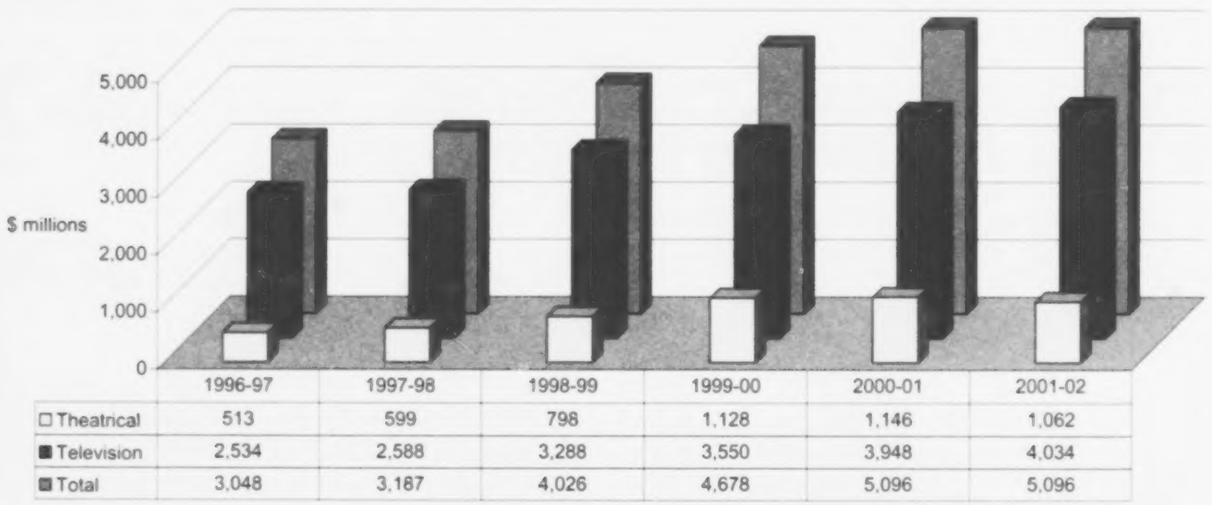
	1998	1999	2000	2001
▨ Expendit.	1,700	1,727	1,831	1,765

Figure 8.4 shows the overall expenditures of Canadian independent production companies for 1998-01. As can be seen, the production sector consistently spent between $1.7 billion and $1.8 billion between 1998 and 2001.

The value of certified film and television production increased by more than 260% between 1993-94 and 2001-02, from $1.9 billion to $5.1 billion. Figure 8.5 shows that in 2001-02, certified Canadian television production was valued at approximately $4 billion, an increase of $1.5 billion from 1996-97. An element of this growth has been the successes of Canadian animation companies. Two vignettes in this chapter highlight the growth of Canada's independent production sector.

Figure 8.5

Volume of certified Canadian film and television production, 1996-2002



	1996-97	1997-98	1998-99	1999-00	2000-01	2001-02
□ Theatrical	513	599	798	1,128	1,146	1,062
■ Television	2,534	2,588	3,288	3,550	3,948	4,034
▨ Total	3,048	3,187	4,026	4,678	5,096	5,096

Figure 8.6 shows the revenues of Canada's top private production companies between 1998 and 2001. It is worth pointing out that the ownership profile of the independent production sector has changed significantly in recent years. Some broadcasters have been purchasing independent production companies (e.g., CanWest Global now owns Fireworks Entertainment and Alliance Atlantis owns Salter Street). Witnesses raised several concerns over this trend. First, when a broadcaster owns a production house, self-dealing may take place. Second, with this type of consolidation, there is the potential for the loss

of regional production and the concentration of decision making in larger centres. Chapters 9 and 11 discuss these issues.

Figure 8.6 Revenues of Canada's top private production companies, 1998-2001 ($ millions)

Company	1998	1999	2000	2001
Alliance Atlantis	342	306	337	276
Fireworks Entertainment	74	143	204	206
Nelvana	78	82	79	135
Lions Gate Entertainment	35	95	96	90
Muse Entertainment	-	-	55	79
BLT Productions	-	-	-	67
Zone3	-	-	50	56
Minds Eye Pictures	10	12	23	41
Peace Arch Entertainment	53	50	91	39
Knightscove Entertainment	-	-	-	39
DECODE Entertainment	10	16	18	34
Temple Street Prods	12	0	23	31
CineGroupe	-	37	23	30

What the Committee Heard

While this section discusses what the Committee heard, it should be pointed out that several other chapters address issues that were raised by Canada's independent producers. For example: Chapter 5 addresses the many specific concerns that were raised by independent producers concerning the funding support system for Canadian television; Chapter 11 discusses the importance of preserving Canadian ownership and control; Chapter 13 talks about the protection of copyright. This section describes some of the general challenges independent producers face when dealing with the existing structure of Canada's broadcasting system.

In her appearance before the Committee, Ms. Annie Piérard, President, Société des auteurs de radio, télévision et cinéma, observed that independent production plays an essential role in the Canadian broadcasting system:

> The general principle of diversity underlies the Broadcasting Act and Regulations. … The legislation also supports the diversity of places where programs are created by fostering a system which calls upon the talents of independent Canadian producers. We can also mention the diversity of access points to the system for artists, creators, producers and distributors, which is supported by the fact that there are many different owners of broadcasting companies. There is diversity in the private and public sectors, which is one of the distinctive characteristics of the Canadian broadcasting system and which must remain so.[4]

The Power of Knowledge

The new production and communication technologies that are stimulating and advancing multimedia productions, both domestically and abroad, have enabled numerous fledgling companies to carve a place for themselves in the field of television production. These companies, which tend to be small or medium-sized, have been able to put together teams of professionals whose knowledge, allure and ambitions are in perfect harmony with the new multimedia production technologies. A number of Canadian companies are at the top of this category, including the Pixcom Group, a small company that the Committee had the pleasure to visit during its travels across Canada.

The Pixcom Group is a private, Montreal-based communications company established in 1987. It is a young company with a very lofty mission: to become a world-class producer of multimedia content and to further the development of international broadcast technologies. Pixcom wants to be recognized for its excellence, technological expertise, boldness and creativity.

The flexibility and skills of Pixcom's technical and production teams allow the company to meet a wide variety of challenges in the fields of sports, dramatic series, children's programming, variety programs, documentaries and public affairs. Almost every French-language network in Canada, not to mention France 2 and France 3, has aired Pixcom productions, many of which have obtained awards such as the Gémeaux and Gemini. They are proof of the company's world-class work.

This perspective prompted Ms. Claire Samson, President, Director General, Association des producteurs de films et de télévision du Québec, to make the following comments about the current state of Canada's broadcasting, particularly in the French-language market:

> I would like to recall the fact that the Canadian broadcasting system is a unique success; it is the envy of many other countries. If we compare the place held by Canadian programs on radio and on television with that of other Canadian cultural products in unregulated sectors, such as movie theatres, for instance, video clubs or music stores, it is easier to see the positive effects of the regulation which exists in the field of broadcasting.
>
> Of course, regulation isn't everything. We also need creators, talented artists, innovative producers and the financial means to meet the high expectations of the public, but when all these conditions are brought together, success is guaranteed. In a general way, proof of this is that during the regular season, 27 or 29 of 30 most watched French-language programs on television are Canadian programs created and produced at home. We therefore must build on a precious foundation which cannot be lost or compromised.[7]

In her appearance before the Committee, Ms. Julia Keatley, Chair of the Canadian Film and Television Production Association, offered a similarly enthusiastic summary of the contributions that Canada's independent production sector makes to English-Canadian television programming:

> Independent producers work in a broad range of formats and genres to give Canadian expression to Canadian stories, interests, and concerns. Primarily we create drama, documentary, and children's programming. When you or your family watch *This Hour Has 22 Minutes*, *The Red Green Show*, *Degrassi: The Next Generation*, *Cold Squad*, *Air Farce*, *Turning Points in History*, *Hoze Hounds*, *Da Vinci's Inquest*, *The Toy Castle*, *Blue Murder*, *Profiles of Nature*, or *Little Miracles*, you might assume you were viewing the creative output of a particular television station or network you are tuned to. In fact, you are watching the work of thousands of talented men and women who make up the Canadian independent production industry.[8]

Ms. Keatley also pointed out (as discussed in Chapter 5) that independent producers are heavily reliant on taxpayer support and, therefore, strive to be as responsible and as efficient as possible. She explained:

> … we're dealing with taxpayers' dollars. One thing that can be said about the independent producers across Canada, whether they're making documentaries, children's programs, or dramas, is they're fairly lean and mean. We're out there to produce artistry, to be creative, to make a living.[7]

But maintaining a balance between creativity and efficiency is not without its pressures. As Mr. Ira Levy, a Board Member with the Canadian Film and Television Production Association told the Committee:

> It's important to realize that when you actually look at how programs are funded, you'll see that it's the producer that takes the biggest risk. Not only do we take artistic risks … but we take creative risks and financial risks.[8]

For this reason, Canada's creators have become — by necessity — highly skilled business people. As Ms. Barri Cohen, National Chair of the Canadian Independent Film Caucus, told the Committee:

> As filmmakers, we combine the specialized skills of making programs for television with the business acumen to run our companies and raise the funds to make our work. Documentary makers have become a vital component of the independent production sector, contributing over $200 million worth of production per year.[9]

But this need for sound business skills has not been detrimental to the growth and success of the industry. On the contrary, Mr. Stephen Ellis, Past Chair, Canadian Film and Television Production Association, told the Committee that:

> … it's … a very cost-effective situation, because as we mentioned in our opening remarks, the broadcasters — and this includes the CBC typically only invest about a quarter of what it costs to produce.[10]

Furthermore, this situation has so enhanced the important role of the independent sector that it has:

> …grown to a point where somewhere in the order of 80% to 90% of the entertainment programming in prime time on the CBC is actually provided by the independent sector, which has the advantage of providing more diverse voices.[11]

All this being said, witnesses did point to several challenges independent producers face in today's broadcasting environment. These include: the abuse of market advantage, self-dealing, gatekeeping, competition for available funds, and the need for a coherent regulatory framework. With regard to the first two of these issues (market advantage and self-dealing[12]), a witness told the Committee that:

> … in an environment with fewer players [i.e., broadcasters], there is real potential for the abuse of market advantage. In the past, a broadcaster would typically obtain rights to show a film or series, for instance, over several years for a certain number of plays with some guarantees of promotion. Now they may want to pay the same fees but ask or demand that their sister channels share the right to broadcast such programs as well for an unlimited number of plays without offering any additional moneys and with limited publicity guarantees.[13]

Moreover:

> We have heard from senior filmmakers and producers that this environment of what we call "forced tied sales" is going on unabated. Market advantage also means broadcasters can set up their own in-house documentary companies, as Alliance Atlantis and Discovery have done, and that these companies feed the constant demand for low-end, low-cost documentary programming for themselves while accessing public funds and tax credits to do so.[14]

For this reason, Mr. Alexander Crawley called on the Committee to ensure that the CRTC enforce more stringently existing self-dealing regulations.[15] It is his organization's view that:

> The self-dealing regulations that the CRTC has put in place to guard against such practices are not being enforced with sufficient rigour, in our opinion, and this needs to be urgently addressed.[16]

Another challenge facing independent producers, raised by Mr. Stephen Ellis, is the extent to which broadcasters can act as the system's gatekeepers. He explained that:

> … in our negotiations with broadcasters, … they are now such powerful gatekeepers, … because it is through them that a producer gets to apply for the CTF and for funding from Telefilm and various other sources.[17]

This reality, he added:

> … gives them the power to acquire a disproportionate share of or interest in the programming that producers would like to produce and retain and ultimately generate some profit from.[18]

Another challenge mentioned by several witnesses was how fragmentation has led to more intense competition to obtain funding from the CTF, Telefilm and the various private funds. As Ms. Barri Cohen explained:

> The available pie of funds for all just got more fragmented, with less to go around for everyone. I think that's why a lot of folks struggle with the contradiction between more money seemingly into the system — which has been referred to before, and that's true — but it has been outpaced by licensing [of more broadcasters]. So the pie may have gotten somewhat larger, but it's essentially more fragmented.[19]

Taken as a whole, the above concerns help explain why independent producers cautioned the Committee to be wary of the recommendation made by the Canadian Association of Broadcasters that private broadcasters be granted direct access to the Canadian Television Fund. As Mr. Mark Laing, Chairperson, Directors Guild of Canada, told the Committee:

> The Canadian Association of Broadcasters is lobbying very heavily for broadcaster access to the Canadian Television Fund. If they are allowed to access those finances directly, it makes a lot of independent producers redundant in the grand scheme of things. It's very threatening to us, as a community, in our ability to bring innovative, interesting, and relevant content to an audience.[20]

Ms. Elizabeth McDonald, President and Chief Executive Officer, Canadian Film and Television Production Association (CFTPA), also stressed this point and added that the time has come for a new, coherent framework to govern the working relationship between Canada's independent producers and the broadcasters. As she noted:

> … let me be clear about one thing about Canadian television and where it's bought — from what producers. It is up to broadcasters, first of all, to license that programming. No project will go forward to any fund unless it's been licensed. And certainly with consolidation, where the licensing is done is becoming an issue.

> That's one of the reasons we're talking about a coherent framework, where the CRTC licenses. In some cases there are some regional conditions of license, in other cases there are not. How we ensure that there's an opportunity for all of those stories, in English and French, to be seen across this country is going to be a challenge when most of the broadcasters are located centrally.[21]

With this in mind, Ms. McDonald's association made the following policy proposals:

> ... it is absolutely vital that the Canadian Television Fund be recognized as an essential component to the funding structure for distinctly Canadian programming and that it receive stable, long-term funding support from the government.
>
> ... it is essential that broadcasters continue to provide access on their channels for the programs we create.
>
> ... public agencies should streamline their administrative procedures so producers are not penalized with additional financing costs.[22]

Similarly, Mr. Jacques Primeau, President of the Association québécoise de l'industrie du disque, du spectacle et de la video, told the Committee that:

> ... regulations could be both streamlined and rendered more efficient ... by strengthening and adapting to the emerging technological and competitive environment those aspects of the regulations which help meet the essential objectives of the act, by ... more systematically turning to self- and co-regulation, and by regulating the contractual relationships with respect to the administrative, commercial, technical and social provisions contained in the current body of regulations.[23]

Proposed Solutions

The Committee regards the growth and achievements of independent television production in Canada as strong evidence that the principles of Canada's broadcasting policy for this sector, as articulated in the *Broadcasting Act*, are being realized. At the same time, it notes that there are valid reasons for serious concern and agrees that measures must be taken to ensure the future health of this sector. In particular, it

agrees with witnesses that changes in ownership make it essential that the CRTC enforce its existing regulations on self-dealing.

It is important to point out that other chapters in this report also deal with many of the issues raised by witnesses concerning the independent production sector. For example:

- Chapter 5 recommends that the Canadian Television Fund be recognized as an essential component of the Canadian broadcasting system.
- Chapter 5 makes several recommendations designed to remedy many of the problems witnesses raised concerning the structure of the Canadian content point system and the administration of the production funds.
- Chapter 11 calls for a moratorium on the CRTC approval of any further cross-media ownership changes until government issues a coherent policy on this issue.

The Committee also recognizes that steps may be required to ensure the widest possible distribution of Canadian programming. It notes that a consistent theme of this report is the conviction that the Canadian broadcasting system should be maintained as a single system. As pointed out in Chapter 4, however, complete and coherent information on the distribution and exhibition of Canadian programming is sorely lacking. This has made it very difficult for the Committee to determine the extent to which certain issues required further consideration.

A case in point is the CFTPA's concern that regional variations in conditions of licence lessen the exhibition of Canadian programming. The Committee agrees that this is a troublesome issue. This is why Chapter 5 recommends ongoing research on the distribution and exhibition of Canadian programming across Canada. Indeed, once such research is undertaken, relevant stakeholders would be far better positioned to make informed decisions concerning the need for any eventual changes in broadcasters' conditions of licence for the exhibition of Canadian programming.

C. Radio Broadcasters

As explained in Chapter 2, broadcasting in Canada can trace its origins to the private sector. Between 1919, the year the first radio broadcasting licence was granted to Marconi Wireless Telegraph Company of Canada, and 1932, the year when the recommendations of the Aird Commission were put into effect, private enterprises provided almost all radio broadcasting services. In 1928, there were 68 private radio broadcasters in Canada.[24] These radio broadcasters were mainly amateurs, families and non-profit groups. It is interesting to note that during the period from 1919 to 1940, just three radio groups developed: Taylor Pearson and Carson, the Roy Thompson Group, and the Siftons.[25]

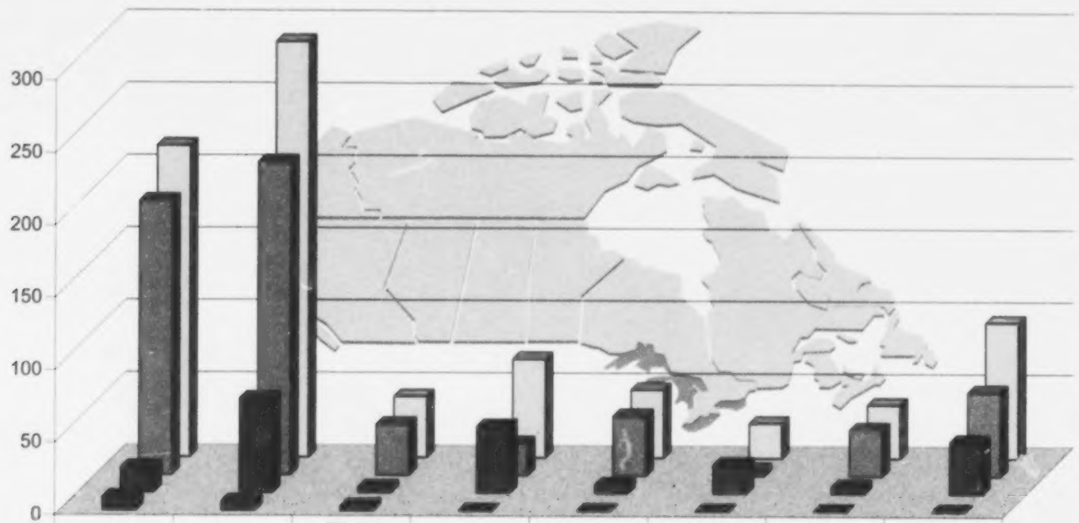
In 1932, following a recommendation by the Aird Commission, the Canadian Radio Broadcasting Commission (CRBC) was created. The CRBC was entrusted with developing public broadcasting and regulating all broadcasting. The economic situation of the 1930s, however, did not allow the government of the day to provide adequate funding to the CRBC. For this reason, it was able to establish just five radio stations.

Since public radio stations could not meet public demand, private radio broadcasters were called upon to broadcast the programming of the CRBC. The advent of the CBC, which replaced the CRBC, maintained this model. Thus, in 1943, the three CBC networks (two English-language and one French-language) had at their disposal 10 public and 72 private stations.[26] At that time, private stations were forbidden from creating networks; this restriction, however, did not prevent the proliferation of private stations in large numbers.

Services

Figure 8.7 shows the total number of English- and French-language radio services in Canada today. There are about 600 radio stations that serve Canada's English-speaking communities and nearly 200 serving Canada's French-speaking communities. This figure also shows the level of service for Canada's third-language (18), native (37), religious (24) and local communities (68).

Figure 8.7 Total number of licenced radio services in Canada by language, 2002



	AM	FM	Digital (transitional)	Community	Campus	Religious	Native	CBC/SRC (inc. digital)
■ Third-language	9	6	3	0	0	0	0	0
■ French-language	17	65	4	46	6	20	5	36
■ English-language	189	216	35	22	41	4	32	58
□ Total	215	287	42	68	47	24	37	94

Ownership

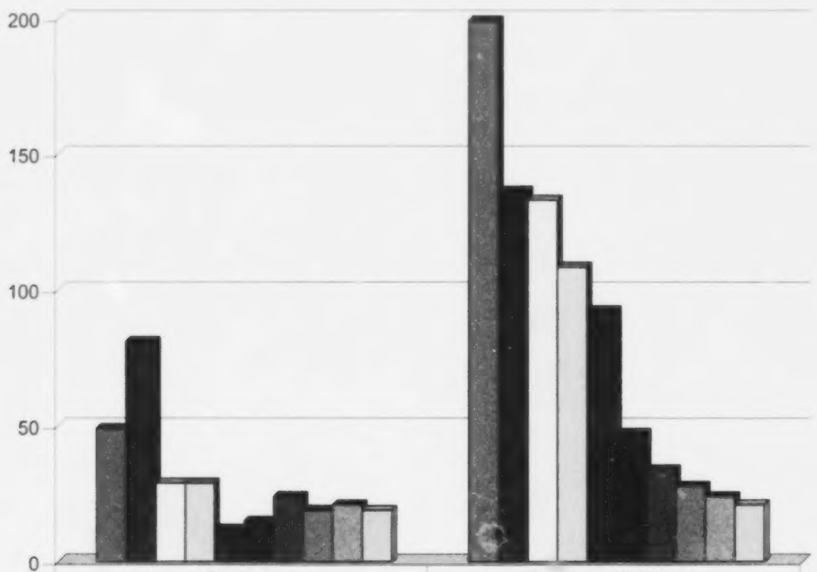
In 1998 the CRTC revised its policy for the ownership of commercial radio stations as follows:

> In the Commission's view, increased consolidation of ownership will enable the radio industry to strengthen its overall performance, attract new investment, and compete more effectively with other forms of media. Accordingly, the Commission has revised its policy on common ownership. The Commission is satisfied that the revised policy will provide for a strengthened radio industry, while responding to longstanding concerns regarding diversity of news voices, media cross-ownership and fair competition.
>
> Accordingly, in markets with less than eight commercial stations operating in a given language, a person may be permitted to own or control as many as three stations operating in that language, with a

> maximum of two stations in any one frequency band. In markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as 2 AM and 2 FM stations in that language.[27]

Figure 8.8 shows the top 10 radio ownership groups in Canada. As can be seen, the top four groups owned 188 radio stations, that is, 38% of all private radio stations in Canada. Furthermore, the top 10 groups accounted for 77% of all radio revenues in 2001.

Figure 8.8 Ten largest Canadian radio operators by holdings and revenues, 2001



Top 10 totals
298 radio stations
$823 million in revenues
77% share of revenues

Private radio totals
511 radio stations
$1.1 billion in revenues

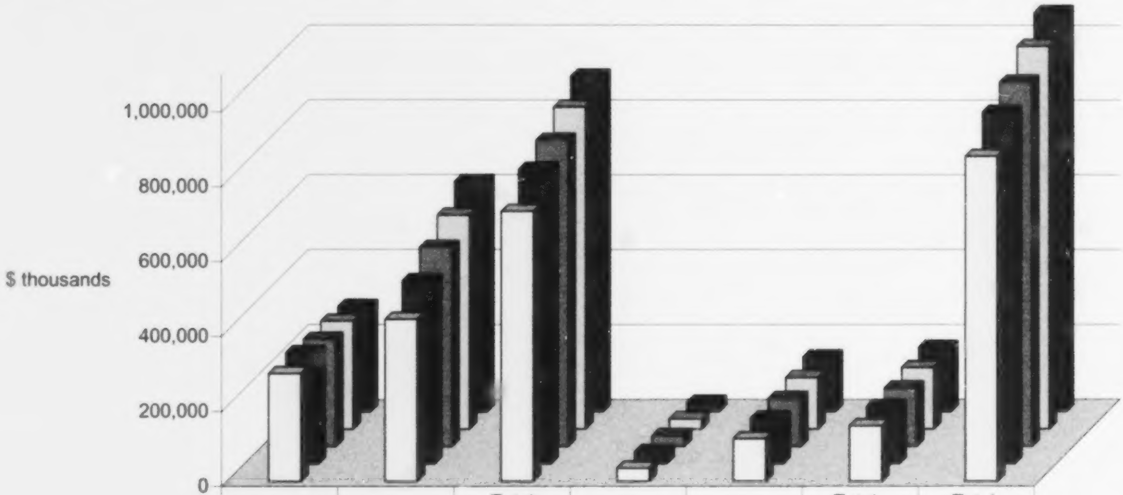
	Stations	Revenues (millions)
■ Corus Entertainment Inc.	49	199
■ Télémédia Inc.	81	136
□ Rogers Communications Inc.	29	133
□ CHUM Limited	29	108
■ Standard Broadcasting Corp. Ltd.	12	92
■ Astral Radio Inc.	15	47
■ Newcap Broadcasting Inc.	24	34
■ Jim Pattison Industries	19	28
■ Maritime Broadcasting Ltd.	21	24
□ Golden West Broadcasting	19	21

Revenues and Profits

The 1986 Report of the *Task Force on Broadcasting Policy* wrote of a balance being struck between commercial interests and public policy goals. One indication of where the balance has been struck is by looking at the profitability of the private broadcasters.

Figure 8.9 shows that total revenues for Canada's private radio stations have grown over the past four fiscal years. It reveals that private radio in Canada generated about $900 million in revenues in 2001. It also shows that AM revenues remained relatively flat during this period, whereas FM revenues, due to the transition of many stations from AM to FM frequencies, were on the rise.

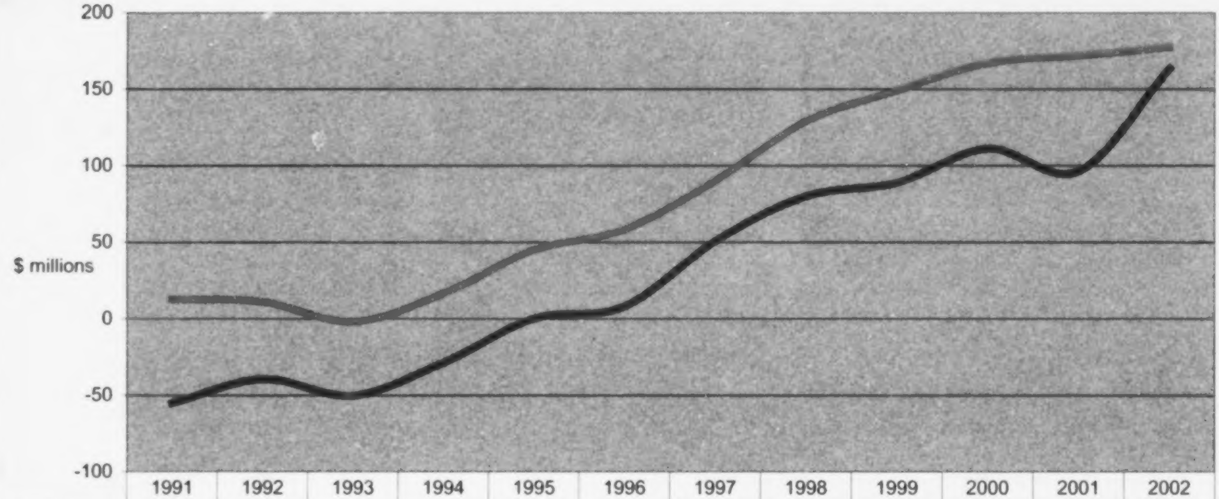
Figure 8.9 English- and French-language AM and FM commercial radio revenues in Canada, 1997-2001



	English AM	English FM	Total English	French AM	French FM	Total French	Total Canada
□ 1997	288,003	432,950	720,953	34,313	113,497	147,810	868,763
■ 1998	297,629	489,155	786,784	31,689	121,595	153,284	940,068
▨ 1999	286,257	531,368	817,625	28,135	127,994	156,129	973,754
□ 2000	288,397	571,253	859,650	26,460	137,329	163,789	1,023,439
■ 2001	280,988	614,447	895,435	24,899	146,218	171,117	1,066,552

Finally, figure 8.10 shows the overall profits of private radio in Canada for the period 1991-2002. These data reveal that the sector was unprofitable between 1991 and 1994. Since that time, however, profits have increased substantially.

Figure 8.10 Total profits (losses) in Canadian private radio, 1991-2002



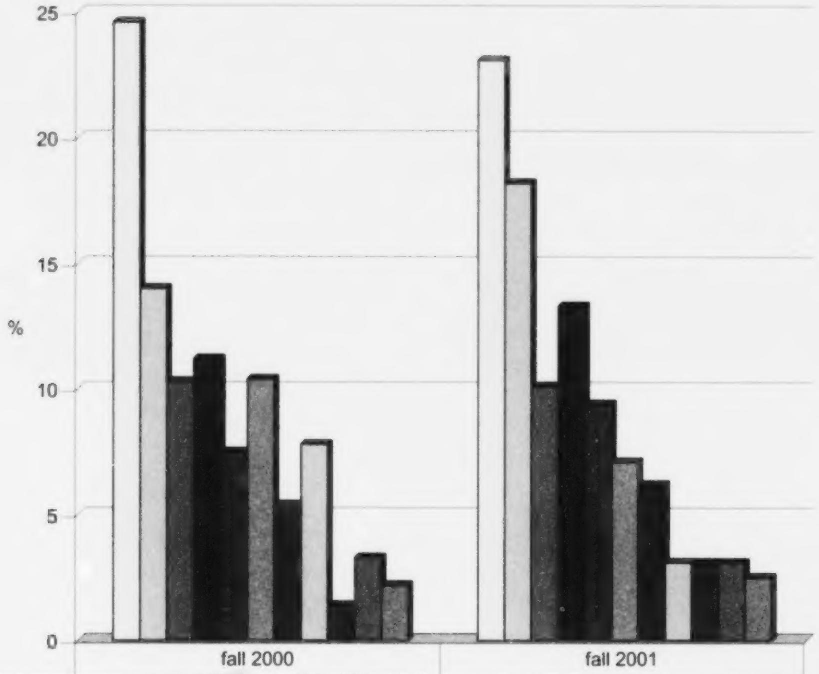
	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
PBIT	12.6	11.2	-1.9	16.4	44.9	58.5	90.2	129.1	149.1	166.9	171.9	177.4
PBT	-55	-39.4	-50.2	-28.6	0.1	8.2	50.8	80	88.9	111.1	96.2	163.4

PBIT = Profits Before Interest and Taxes (and adjustments)
PBT = Profits Before Taxes (but after adjustments)

Radio Formats

As noted in Chapter 4, measuring audiences to radio is a difficult undertaking. Part of the problem is the lack of any consistent or agreed-upon categories to describe radio stations. A second problem is that programming broadcast on radio is not classified into separate genres the way it is for television. This means that when we talk about radio, we can only talk about the format of a station as a whole. Figure 8.11 shows the most popular radio formats in fall 2000 and fall 2001. Overall, the adult contemporary format was favoured by nearly one-quarter of all listeners, while the "gold/oldies/rock" format was the format of choice for 18% of Canadian radio listeners.

Figure 8.11 Most popular radio formats in Canada, 2000-01



	fall 2000	fall 2001
☐ Adult contemporary	24.6	23.1
☐ Gold/oldies/rock	14	18.2
■ Talk	10.3	10.1
■ Country	11.2	13.3
■ Contemporary	7.5	9.4
▨ CBC/SRC	10.4	7.1
■ Other	5.4	6.2
☐ Album-oriented-rock	7.8	3.1
■ Middle-of-the-road	1.4	3.1
■ American stations	3.3	3.1
▨ Easy listening	2.2	2.5

Canadian Content Policies and Regulations for Commercial Radio

The CRTC's Commercial Radio Policy has three main objectives:

> … to ensure a strong, well-financed radio industry that is better poised to achieve its obligations under the Act and to meet the

> challenges of the 21st century. … to ensure pride of place for Canadian artists. … to ensure that a French-language presence in radio broadcasting is maintained.[28]

To meet these objectives, the Commission imposes the following Canadian content requirements on commercial radio broadcasters:

> All radio stations [English and French] must ensure that 35% of their popular musical selections are Canadian each week. In addition: Commercial radio stations must ensure that 35% of the musical selections they air between 6 a.m. and 6 p.m., Monday through Friday, are Canadian. …
>
> French-language radio stations must ensure that at least 65% of the popular vocal music selections they broadcast each week are in the French language. As well, at least 55% of the popular vocal music selections broadcast between 6 a.m. and 6 p.m., Monday through Friday, must be in the French language.[29]

A system known as MAPL is used to identify Canadian music. To qualify as Canadian a musical selection must generally meet at least two of the following four criteria:

> **M** (music) — the music is composed entirely by a Canadian.
>
> **A** (artist) — the music is, or the lyrics are, performed principally by a Canadian.
>
> **P** (production) — the musical selection consists of a live performance that is recorded wholly in Canada, or performed wholly in Canada and broadcast live in Canada.
>
> **L** (lyrics) — the lyrics are written entirely by a Canadian.[30]

Unfortunately, very little can be said about the overall delivery of Canadian content programming on commercial radio in Canada. This is because the CRTC does not track compliance until a radio station's licence is up for renewal. Based on these limited data, the CRTC reported in November 2002 that 95% of 37 radio stations were in compliance with the all day requirement and 92% were in compliance between 6 a.m. and 6 p.m. As for French vocal music, 67% of six radio stations were in compliance with the all day requirement, while 67% met the requirement between 6 a.m. and 6 p.m.[31]

The Canadian Music Industry – A Success That Deserves Celebration

In the year 2002, 113 Canadian musicians had records certified as gold, platinum, or diamond. This was an increase of 86% on the previous year, a remarkable success at a time when CD sales have declined and Internet file sharing endangers the economic base for music.

One should not downplay the threat to the industry. But it is important nonetheless to pause and reflect on the huge successes of Canadian music in the years since 1971.

It is in 1971 that the CRTC first required radio stations to dedicate 30% of their music playlists to Canadian music — that is, cuts that met two out of the four possible criteria (Canadian **M**usic, **A**rtist, **P**roduction or **L**yrics). At the time, the move was very controversial. Was there enough good Canadian music to fill the airwaves? The answer was probably not. In those days, there were few Canadian records, and those musicians who became stars — like Joni Mitchell, Leonard Cohen, Ian and Sylvia, and Gordon Lightfoot — had little chance to record in Canada. To make it in Canada, you first had to make it in New York or Los Angeles.

What the MAPL rules did was create a demand for Canadian records, and that, in turn, called a Canadian record industry into being. Thirty years later Canada has an abundance of top stars in music who are recognized worldwide. Artists like Céline Dion, Shania Twain, Diana Krall, Nickleback, Avril Lavigne, and 108 others made the gold, platinum, and diamond-selling records of 2002 — and next year there will be new names to add to the list.

To be sure, the domestic industry has its problems. With better access to global backing, our best artists may bypass our domestic industry on their way to international success. And unless the Internet puzzle is solved, the whole industry is in trouble everywhere.

But the measure of success for the MAPL program is that it continues, year after year, in all styles, to foster the development of great musicians and great Canadian music. It is, arguably, the single most successful policy measure in the history of Canadian broadcasting.

Canadian Talent Development

To foster Canadian musical talent, the CRTC issued a Canadian Talent Development policy (CTD) in 1995.[32] This policy requires AM and FM radio stations as a condition of licence to contribute to Canadian talent development by making annual payments to eligible third parties as defined by the Canadian Association of Broadcasters (CAB). In 2001, there were more than 350 eligible third party CTD organizations. Eligible organizations include two music funds, Factor and MusicAction, as well as national and provincial music organizations, performing arts groups, schools and scholarship recipients.[33]

Regrettably, the CRTC does not collect annual data on the impact of its Canadian talent development policy. In 2000, however, the Canadian Association of Broadcasters conducted a survey of its members to assess the value of CTD contributions. Figure 8.12 shows the CAB's findings. As can be seen, 267 private radio stations contributed more than $16 million to Canadian talent development in 1998-99. According to the CAB, this total increases to $20 million if adjusted to take into consideration the Association's entire radio membership.

Figure 8.12 Reported "Canadian Talent Development" spending by private radio broadcasters, 1 Sept. 1998 to 31 Aug. 1999 (267 respondents)

Category/Activities	$ Value
On-air Promotion/Interviews (e.g. concert promos, theatre, festivals, special events, artist interviews, contests)	8,760,665
Concert/Bands Presentations and Sponsorships	5,345,425
Canadian Radio Music Awards/Month	394,876
Félix Awards	87,472
Talent Contests	574,033
CD Compilations	413,429
Original Programming (e.g. original station programming that features Canadian artist, local talent)	520,136
Industry Conferences	155,550
Direct Cash/Contributions/Scholarships/Donations	61,934
Total	16,313,520

It is worth noting that the CAB is of the view that these expenditures are largely voluntary contributions since: "... these are voluntary commitments undertaken by stations that go above and beyond those required by the Commission as part of radio broadcasters CTD condition of licence (COL) requirements."[34] Indeed, according to the guidelines agreed upon by the CRTC and the CAB in 1996:

> The purpose of the CAB Distribution Guidelines is to ensure that Canadian radio stations, considered together, allocate a minimum of $1.8 million each year to eligible third parties associated with Canadian talent development.[15]

The Radio Starmaker Fund / Fonds RadioStar

It is important to remember that Canada's private radio broadcasters are dependent on the music industry for their supply of Canadian recordings. For this reason, the Radio Starmaker Fund and Fonds RadioStar were created in the fall of 2000. The initial idea for these Funds flowed from suggestions made by the Canadian Association of Broadcasters during the 1997 commercial radio policy hearing, that the existing benefits test be replaced with a minimum contribution to FACTOR/MusicAction, and a new Canadian music marketing and promotion fund.

The Foundation to Assist Canadian Talent On Record (FACTOR)

As a private non-profit organization and an industrial strategy, FACTOR is dedicated to providing assistance toward the growth and development of the Canadian independent recording industry. The funds not only assist Canadian recording artists and songwriters in having material produced, videos created or to tour internationally, but they also provide support for Canadian record labels, distributors, producers, engineers, directors — all those facets of the infrastructure which must be in place in order for artists and the Canadian independent recording industry to progress in the international marketplace.

MusicAction

MusicAction, a non-profit organization, was created in August 1985 on the initiative of professionals of the Quebec radio, record and entertainment industries. The foundation's chief objective is to foster the development of Francophone vocal music by supporting the production, marketing and promotion of sound recordings. World music, classical music and instrumental music projects are also eligible for support. MusicAction is also mandated to provide an umbrella organization for the Canadian independent recording industry.

The CRTC endorsed the CAB's initiative and asked that it develop a proposal in coordination with the Canadian Independent Record Production Association, the Canadian Recording Industry Association and the Association québécoise de l'industrie du disque, du spectacle et de la vidéo. The Radio Starmaker Fund is for the English-language music industry and the Fonds RadioStar is for French-language Canadian artists. The Fund is supported by a 3% charge on the value of all ownership transactions involving profitable radio stations. The funds have been fully operational since fall 2001 and have, to date, committed over $4.2 million to Canadian artists. It is expected that the funds will continue to support Canadian artists at this level for the next 8-10 years.

The stated purpose of the funds is to "make a substantial and discernable difference to the careers of Canadian artists" by providing a substantial incremental investment where the artist has established a proven track record and his or her label is making a significant investment in his or her career."[46] Monies provided must be incremental to existing investments being made for promotion and marketing of Canadian artists.

The funds support emerging artists with star potential from every region of Canada. The aim is to spend the money in a way that will make a difference. For this reason, monies are not spread thinly, but are spent on a small number of ventures to help artists achieve the breakthroughs needed to become stars. The ultimate objective is to be involved in the business of increasing the supply of good, playable Canadian music.

The application process anticipates and requires that both the artist and the record label will submit one application per project with both parties signing and submitting the application. A manager or publisher may also apply in conjunction with an artist provided that it can be established that a significant non-recoupable investment is being made in an artist.

What the Committee Heard

Very few witnesses talked about private radio; when they did talk about radio, it was typically within the context of discussions about the state of the CBC/SRC, community radio and copyright. These issues are dealt with in chapters 6, 9 and 13, respectively.

When the Minister of Canadian Heritage appeared before the Committee, she observed that Canadian content rules for radio: "have helped to create an extraordinary domestic and international success for Canada's music industry."[17] Many witnesses agreed with this perspective. Mr. Glenn O'Farrell, President and Chief Executive Officer, Canadian Association of Broadcasters, told the Committee:

> The Minister of Canadian Heritage and her officials have demonstrated their commitment to the continued development of popular Canadian music through the Canada Music Fund but also, interestingly, through the Investment Canada Act. … We applaud that. These are significant benefits, which strategically bundled with public and private money make a considerable difference in the cultural products we produce. … As a result, we have some tremendous English and French music stars in this country, and for many music formats on radio there is an excellent supply of Canadian music selections.[18]

Similarly, Mr. Mark Maheu, Vice-President and General Manager with CFRA/KOOL-FM observed that Canada's approach to regulation, marketing and promotion has led to "some very major successes like Céline Dion, Éric Lapointe, the Barenaked Ladies, and Shania Twain, and rising stars like Nellie Furtado, Kevin Parent, and Sum 41."[19]

But it is not just regulation that has enabled many Canadian artists to reach the levels of national and international popularity that they enjoy today. As Mr. Claude Gagné, a representative from the Télémedia radio group, told the Committee, specific challenges have also necessitated that private broadcasters develop new strategies to nurture talent. He explained:

> Almost 30 years ago, FM radio regulations came into force to provide a regulatory framework for emerging FM radio. … At the time … a radio broadcaster could fill half of his French-language programming requirement with music from Europe and elsewhere. … At the same time, Quebec music was booming, with groups and music emerging like Beau Dommage, Harmonium, Charlebois, and many others, which gave Quebec a flourishing and dynamic music industry in the unique North American environment.
>
> Over … the past ten years, this has changed. France produces … much less music than it did before … In order to counter the drop in high-quality musical sources, radio broadcasters had to find solutions themselves. The result was a Quebec star system that has its own stars, honours and institutions. Canadians and Quebeckers,

> to whom local stars are very important, were instrumental in helping the system take hold. Many research tools used by broadcasters confirm this view: Canadians like Canadian artists. That is where the strength of the Canadian broadcasting system lies. Broadcasters were the first to understand the need to give emerging artists an opportunity to ensure the industry's succession by promoting shows, festivals and CDs, giving away tickets on the airwaves, establishing intimate, exclusive-unplugged concerts, and implementing a vast range of other initiatives to give emerging artists the tools they needed to expand, produce, sell and innovate.[40]

These successes, however, should not be seen as a sign that all is well in Canadian radio. On the contrary, as Mr. Mark Maheu observed:

> … in key music formats such as adult contemporary and classic rock, there is still too little music to choose from, and there are too few major stars to maintain a steady and fresh flow of Canadian content for radio, where 35% is the Canadian content threshold for most popular music formats.
>
> Some radio formats face content problems when major recording stars take a break from producing music. In addition, these artists can burn out too quickly when back in rotation. Some recent examples of that would include artists like Amanda Marshall and the Tragically Hip.[41]

Echoing a similar perspective, Mr. Claude Gagné noted that:

> We are extremely proud to see our panoply of stars garnering success in France. They include Garou, Lynda Lemay, Isabelle Boulay, Natasha St-Pier and, before them, Céline Dion and Roch Voisine. It is the Quebec star system and private broadcasters that have made it possible for these artists to go from being unknowns to superstars in such a short time.
>
> But the system is fragile. It is dynamic but also risky, with hazards of over-exposure and over-dependence. … [U]nfortunately, French-language and Canadian content requirements do not take into account drops in production, or less generalist waves of musical creativity. When a station fills its 65% French-language requirement with primarily Quebec material, Canadian content can reach 50%, exacerbating the over-exposure problem. Although adult audiences may like familiar, well-known tunes, younger audiences want new music. When listeners hear the same tunes over and over again and

> get nothing new, they may tune in less or drop the station all together. That is not in anyone's best interest.[42]

With these concerns in mind, it was argued by some that the time has come to rethink the existing regulatory approach used for Canadian radio. For example, Mr. Mark Maheu stated:

> The point is that we need some fresh approaches in order to continue building a robust Canadian music industry that will be able to attract Canadian listeners and consumers. Much of what we have done in regulation, marketing, and promotion has given rise to success, but we can do more to bring even greater success to both Canadian radio and Canadian music.[43]

And, Mr. Claude Gagné observed:

> That it is ... a good time to review what has worked in the past for Canadian artists and what could work better. It is also an excellent time to examine initiatives that could inspire and encourage broadcasters to do more, or to do things differently. In addition, if we want broadcasters and artists to prosper and evolve together, then the success of one group cannot be at the expense of the other.[44]

For his part, Mr. J.J. Johnston, General Manager and Vice-President, Programming, Corus Entertainment Inc., suggested two solutions: "Let's start giving more airplay to new artists, and let's start counting music performed by Canadians as Canadian content."[45] To this end, he proposed that the MAPL system be redeveloped to encourage radio stations to devote more airtime to new Canadian artists. He explained:

> ... as it stands you need to have two points to qualify as a Canadian selection. This has resulted in numerous cases where content performed by Canadians is not counted among Canadian selections. For instance, recordings performed by Canadians such as Céline Dion, Neil Young, and Ronnie Hawkins have not counted as Canadian content in the past.
>
> Alternately, recordings performed by non-Canadians such as Rod Stewart and Aerosmith have been counted as CanCon. To broaden available Canadian recordings in a number of radio music formats, we need to increase the point allocation for artists from one to two points, thereby allowing recordings performed by Canadian artists to count as Canadian content, which is a proven method in the feature film sector and which is also currently used by CAVCO.[46]

With the above points in mind, Mr. Glenn O'Farrell, speaking on behalf of the Canadian Association of Broadcasters, made the following recommendations:

> … we call on the Minister of Canadian Heritage to direct the CRTC to examine regulatory incentives to stimulate the supply of music and the development of stars in two ways. The first … is by crediting the airplay of new Canadian artists, for both English language and French vocal music, at 1.5 selections toward the 35% CanCon requirement, when radio plays the new selection within 12 months of its release. Second is modernizing the rules for what counts as Canadian by allowing a two-point credit when a song's performer is Canadian.[47]

Proposed Solutions

Overall, the Committee recognizes the achievements of the Canadian radio industry but is very concerned about its long-term health. With this in mind:

RECOMMENDATION 8.1:

The Committee recommends that the Department of Canadian Heritage create a committee composed of radio industry stakeholders to review and determine the level of success of the MAPL system. This study should include a review of definitions of Canadian content and the ways in which the system can foster the development of new artists.

The Committee is also troubled by the absence of useful data on radio in Canada. In particular, it finds it unacceptable that the CRTC does not collect more comprehensive data on the radio industry and that it has permitted the Canadian talent development initiative to operate without any formal reporting mechanisms since 1996. With this in mind:

RECOMMENDATION 8.2:

The Committee recommends that the Department of Canadian Heritage, in collaboration with the CRTC and radio industry stakeholders, develop a strategy to monitor and report annually on the extent to which the public policy goals for Canadian radio are being achieved.

The Committee is of the view that such a report should include data on the overall airplay and types of Canadian music and radio programming (e.g., local news, non-news, public affairs, community), as well as more complete information on the ways in which money is invested into Canadian talent development. Such a review should also include an annual report on MAPL or its successor.

D. Television

As noted in Chapter 2, television broadcasting made its official debut in Canada with the launch of CBC stations in Montréal and Toronto in 1952. At first, each Canadian market was limited to one station, public or private, which was expected to broadcast the national programming provided by the CBC. It quickly became apparent, however, that Canadians wanted more stations and programs.

During the 10 years following its inception, television grew at a spectacular rate in Canada. By 1961, there were 68 television stations, of which 9 belonged to the CBC and 59 to private companies. As for rebroadcasters, there were 55, of which 8 belonged to the CBC and 47 to private interests.

Beginning in the 1960s, private networks were licenced across Canada: the English-language Canadian Television Network (CTV) in 1961, Télé-Diffuseurs Associés (TVA) Quebec in 1971 and Global in Ontario in 1974. Today, there are five national networks, three English-language (CBC, CTV and CanWest Global Communications) and two French-language (SRC and TVA). There are also several regional networks, operated by CHUM, TQS and the Craig Broadcasting Group.

Services

Figure 8.13 shows the scope of Canadian television services in 2002.[48] According to these data, there are nearly 500 television services available to English-speaking Canadians, more than 100 French-language services, 27 third-language services and almost 250 community cable service providers. This figure also shows that Canadians enjoy access to more than 90 foreign television services.

The CHUM Story

Even when Citytv first went on the air in 1972, it was unlike other television stations. Using a low-powered UHF transmitter and lightweight equipment, it was the first to recognize the realities of the cable television age, and the first to embrace urban culture as its distinguishing style.

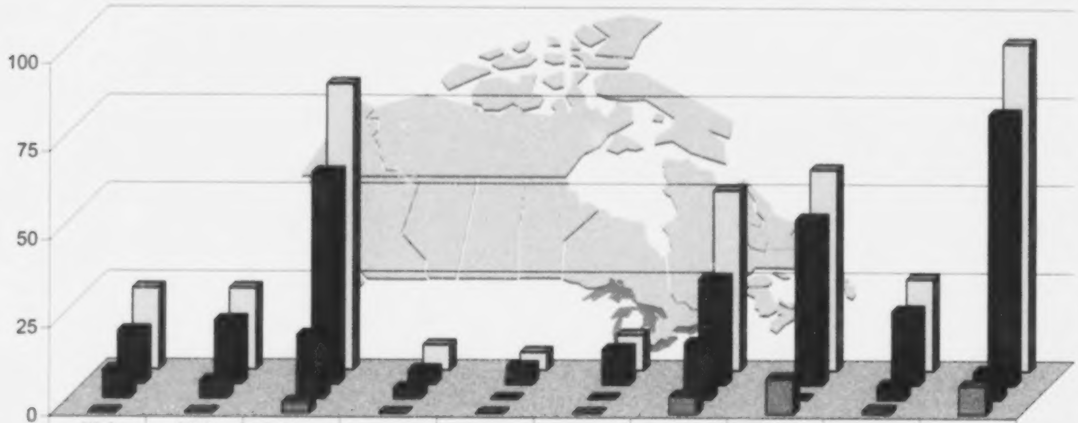
But in 1987, the new CHUM building opened in Toronto, and with it came a whole new model for creating television. While it is the home to Citytv and CHUM's family of specialty channels, this building contains no traditional studios. Instead, every space in the building is a potential set for television. Cameras and mikes are portable, and use a network of 35 "hydrants" to send their signals to the control rooms that assemble City, MuchMusic, MuchMoreMusic, Space and the many other channels which originate in the building.

Hosts work without scripts, moving freely from area to area; camera operators follow them, maintaining a seamless "uncut" video flow. Famous musicians perform live in the streetfront/storefront space with fans only steps away, and others watching through the building's huge street level picture windows. Outside the building, "videographers" interview their guests with a camera perched on one shoulder, watching the guest through the lens. In co-founder Moses Znaimer's words, the building "shoots itself".

The success of the spontaneous "live, local, and interactive" format created by City is emphasized by its adoption around the world. Not only is it the chosen style of eight CHUM stations in Canada, but it has also been exported to Citytv Bogota, Citytv Barcelona, MuchMusic Argentina, MuchUSA, and the "Station within a station", Jyrki, part of Finland's MTV3.

Not resting on its laurels, CHUM recently became the first television group in Canada to regularly offer interactive television in its signals, and Citytv was licenced as the first high-definition digital television station in the country. CHUM's dedication to the leading edge continues.

Figure 8.13 Total number of television services in Canada by language and type, 2002



	CBC Owned	CBC Affiliates	Private Conv.	Educ.	Religious	Native	Analog spec/pay	Digital spec/pay	Other	Foreign
▨ Third-language	0	0	3	0	0	0	5	10	1	8
■ French-language	8	5	18	3	0	0	16	0	4	8
■ English-language	15	18	60	4	5	10	30	47	21	77
☐ Total	23	23	81	7	5	10	51	57	26	93

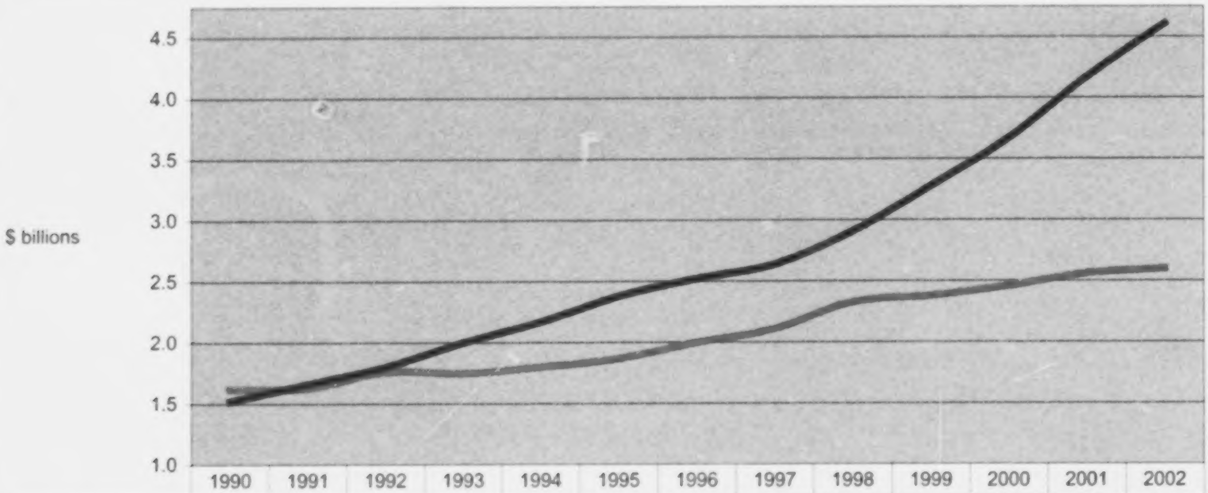
Total number of television services in Canada
Third-language: 27
French-language: 109
English-language: 484
Overall: 620

(Note: The overall total includes 47 French-language and 197 English-language community cable service providers.)

Revenues and Profits

Private broadcasters derive most of their revenues from advertising and subscriptions. Figure 8.14 shows advertising and subscription revenues in the Canadian television system (including conventional television, specialty services, pay television and BDUs) for the period 1990-2002.[49] This figure highlights the increasing importance of subscription revenues for Canada's broadcasting system in today's marketplace. It shows that subscription revenues surpassed advertising revenues in 1990 and that this gap has only widened since that time.

Figure 8.14 Advertising and subscription revenues in Canadian television broadcasting and distribution, 1990-2002



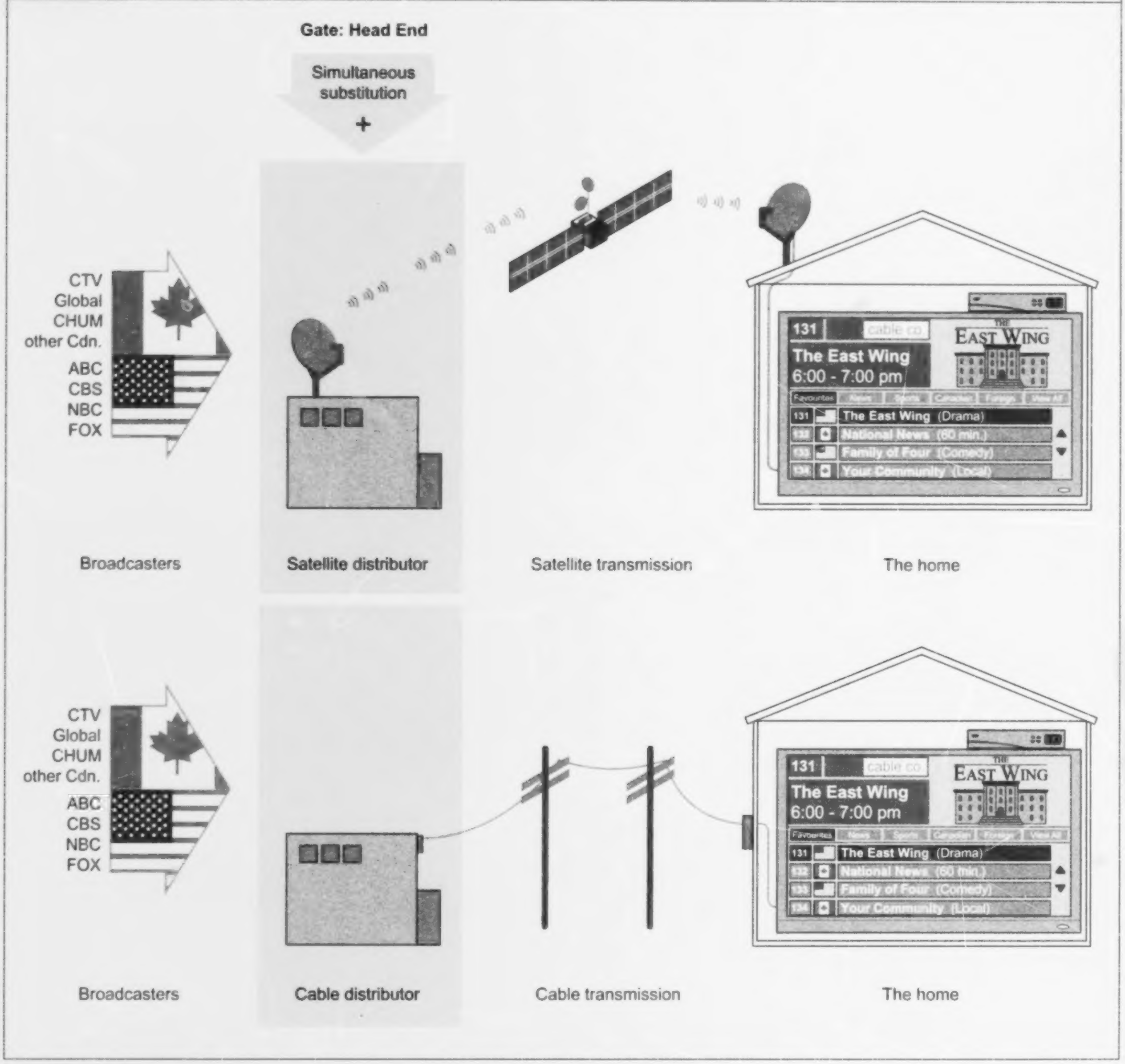
	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Advertising	1.62	1.63	1.76	1.75	1.8	1.87	2	2.11	2.33	2.38	2.46	2.56	2.6
Subscriptions	1.52	1.66	1.8	2	2.17	2.38	2.52	2.64	2.91	3.28	3.67	4.17	4.61

It is worth pointing out that a certain portion of advertising revenue comes from simultaneous substitution (see inset and figure 8.15), a practice whereby American commercials are replaced with Canadian commercials during the simultaneous broadcast of programming on an American network for which a Canadian broadcaster has purchased the rights. While there is some disagreement as to the exact value of simultaneous substitution, the Canadian Association of Broadcasters in a brief submitted to the CRTC in 1998 suggested that this policy represents "some $150 million annually in advertising revenue."[50]

Simultaneous Substitution

Simultaneous substitution, which has been in place in Canada since 1976, is an example of how technology can be used to protect the financial stability of Canadian broadcasting. Canadian broadcasters often buy the Canadian rights for U.S. television programs and show these programs at the same time they are shown by the U.S. networks. Under simultaneous substitution regulations, a network may request that broadcasting distribution undertakings (BDUs) replace the advertising on an American network with the Canadian network's advertising for that program. The program Law & Order, for example, may be shown on Tuesday at 9:00 p.m. by both CTV and NBC, with Canadian viewers seeing CTV's advertisement on both channels.

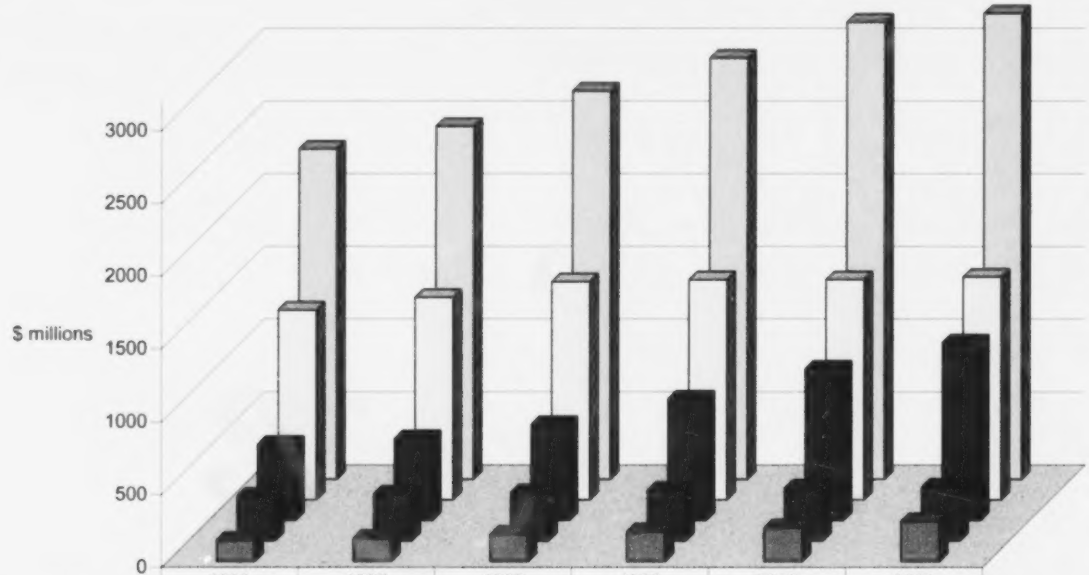
Figure 8.15 Simultaneous substitution: How technology can be used to protect the value of English Canadian broadcasting


Gate: Head End
Simultaneous substitution
+
CTV
Global
CHUM
other Cdn.
ABC
CBS
NBC
FOX
131
cable co.
The East Wing
6:00 - 7:00 pm
THE EAST WING
Favourites
News
Sports
Canadian
Foreign
View All
131 The East Wing (Drama)
National News (60 min.)
Family of Four (Comedy)
Your Community (Local)
Broadcasters
Satellite distributor
Satellite transmission
The home
CTV
Global
CHUM
other Cdn.
ABC
CBS
NBC
FOX
131
cable co.
The East Wing
6:00 - 7:00 pm
THE EAST WING
Favourites
News
Sports
Canadian
Foreign
View All
131 The East Wing (Drama)
National News (60 min.)
Family of Four (Comedy)
Your Community (Local)
Broadcasters
Cable distributor
Cable transmission
The home

Not all U.S. programs are subject to simultaneous substitution. Only if a Canadian broadcaster is showing the same show at the same time may the substitution be requested. The regulations, moreover, do not apply to the smallest BDU systems. Still, simultaneous substitution covers the most popular U.S. programs shown in all major market English-language markets in Canada.

Figure 8.16 shows revenues for private conventional television, pay-per-view and specialty services for the period 1996-2001. Overall, revenues in Canadian television broadcasting increased by more than $1 billion — from $2.3 billion to $3.4 billion — between 1996 and 2001.

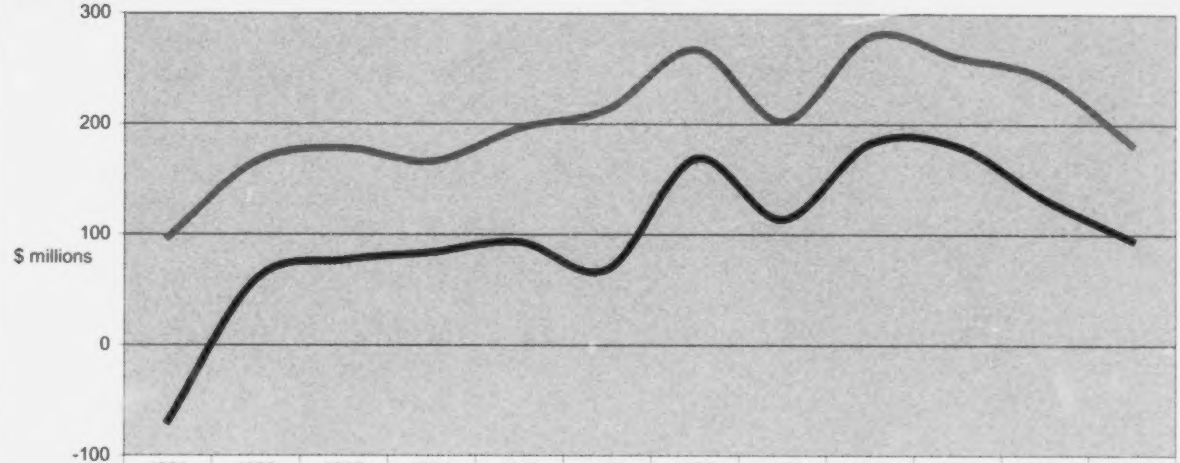
Figure 8.16 Private conventional and pay and specialty revenues for English and French television, 1996-2001



	1996	1997	1998	1999	2000	2001
▨ French: pay and specialty	143	156	184	203	230	272
■ French: private conventional	304	320	329	347	361	366
■ English: pay and specialty	521	561	658	834	1,040	1,219
□ English: private conventional	1,301	1,387	1,496	1,509	1,510	1,528
□ Total	2,269	2,424	2,667	2,893	3,141	3,385

Figures 8.17 and 8.18 show television PBIT and PBT for commercial and pay and specialty television services for the period 1991-2002. In general, the profitability of pay and specialty services increased during this period. Overall, however, these figures show that profits before taxes for television were volatile during this period. For example, conventional television services experienced losses of almost $70 million in 1991 and profits of $182.7 million in 1999. Similarly, profits for pay and specialty services ranged from a low of $37.3 million in 1996, to a high of $194.9 million in 2001.

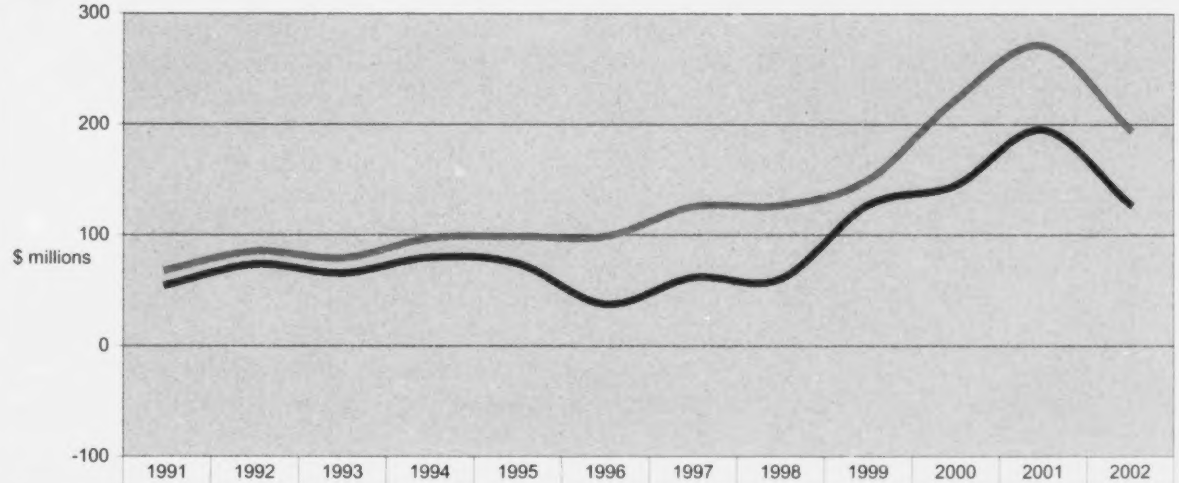
Figure 8.17 Total profits (losses) in Canadian private television, 1991-2002



	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
PBIT	97.5	165.9	177.9	166	196	213.3	267.1	202.3	279.6	260.3	241.9	181.8
PBT	-69.2	59	76.7	83.7	92.9	68.4	168.4	113.7	182.7	179.8	132	95

PBIT = Profits Before Interest and Taxes (and adjustments)
PBT = Profits Before Taxes (but after adjustments)

Figure 8.18 Total profits in Canadian pay and specialty television, 1991-2002



	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
PBIT	68.5	85.1	78.9	96.9	98.4	98.5	125.2	126.3	149.5	221.9	270.9	195.4
PBT	54.8	73.1	65.4	79.6	74	37.3	61.4	60.1	126.8	144.6	194.9	127.9

PBIT = Profits Before Interest and Taxes (and adjustments)
PBT = Profits Before Taxes (but after adjustments)

Eligible Expenditures on Canadian and Foreign Programming

Prior to 1 September 2000, Canadian private broadcasters were expected to spend a certain amount of their revenues on Canadian programming each year. This requirement was dropped by the CRTC on 11 June 1999 with the release of its new television policy. The justification for this change was as follows:

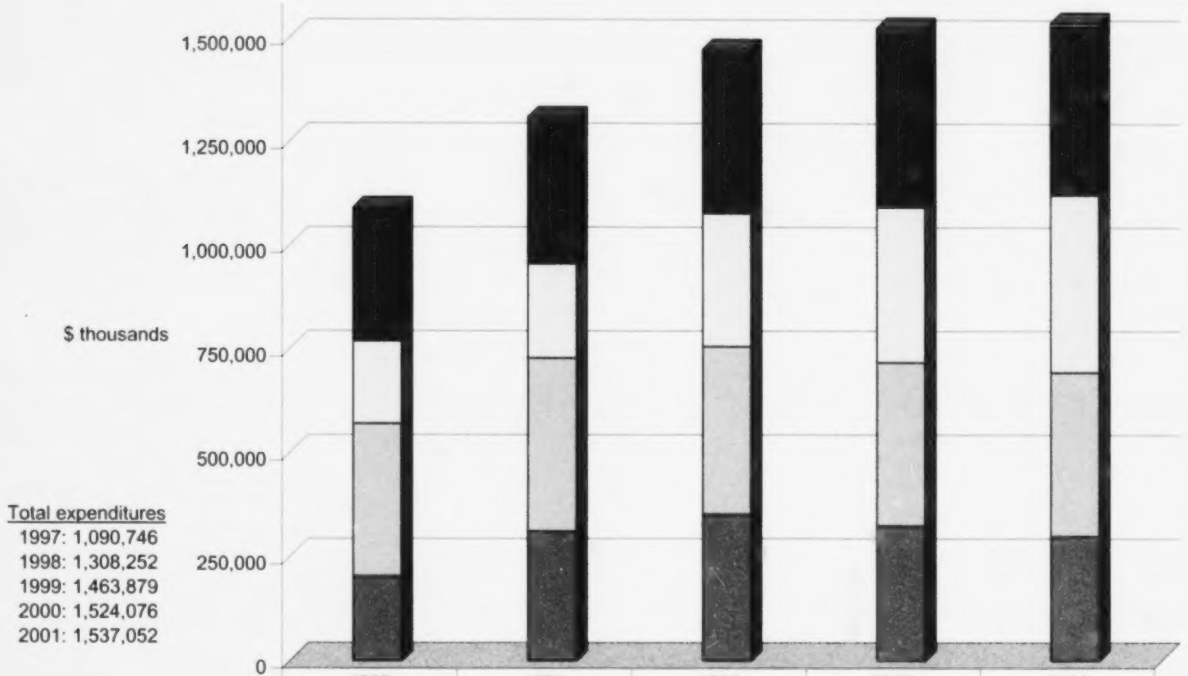
> The Canadian broadcasting system has become increasingly competitive. In such an environment, licensees need flexibility and diversity to attract the largest possible audiences and advertising revenues. The Commission believes that, in a competitive environment, licensees require high-quality programming to win audience loyalty.
>
> The Commission is concerned that the existing expenditure requirements are complex and may not provide licensees with the flexibility they require to adapt their programming strategies to a highly competitive marketplace. In addition, concerns regarding the equitable application of expenditure requirements have begun to outweigh the benefits.[51]

Figure 8.19 shows overall expenditures for the period 1997 through 2001 on Canadian television programming. All together, Canada's English-language private conventional broadcasters had average expenditures of about $400 million on Canadian content during this period. Meanwhile, Canada's English and French pay and specialty services, when combined, spent more than $500 million in 2002, which is double the amount spent in 1997.

What figure 8.19 also shows is that total expenditures on Canadian programming did not decline during the period 1997 to 2001. On the contrary, spending on the production of Canadian programming increased by about $450 million, from about a billion dollars in 1997, to more than $1.5 billion in 2001. However, as will be seen, there are notable variations among broadcasting categories. For example, expenditures by English-language pay and specialty services more than doubled between 1997 and 2001. At the same time, the expenditures of conventional services (French and English) experienced only moderate increases.

This growth is noteworthy when one considers that the international program production market has been contracting, with the collapse of Vivendi Universal, Germany's KirchMedia and Italy's Checchi Gori.

Figure 8.19 Total eligible expenditures on Canadian programming by all Canadian broadcasters, 1997-2001



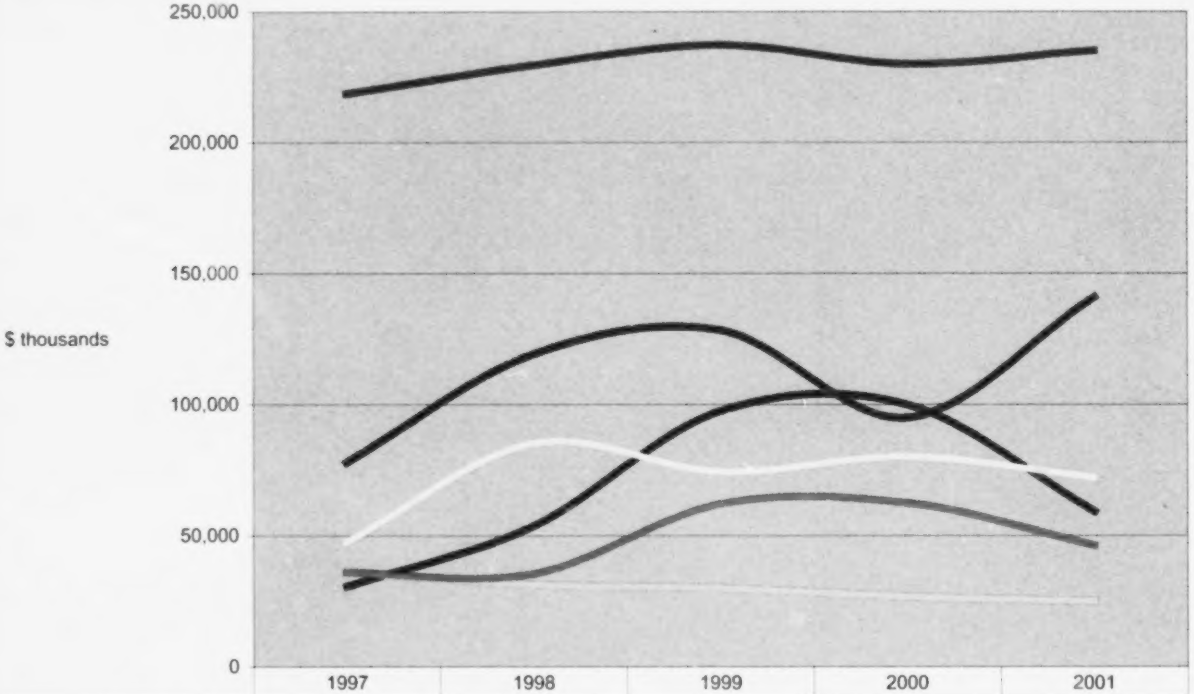
Total expenditures
1997: 1,090,746
1998: 1,308,252
1999: 1,463,879
2000: 1,524,076
2001: 1,537,052

	1997	1998	1999	2000	2001
▨ Third language: specialty	5,718	7,350	7,842	8,346	9,062
■ French: pay and specialty	60,828	77,710	82,551	93,107	109,059
■ French: SRC & private conv.	254,534	267,653	303,989	329,887	296,403
□ English: pay and specialty	198,739	226,668	320,921	374,803	428,173
▨ English: private conventional	367,172	417,516	403,377	393,638	394,810
■ English: CBC	203,755	311,355	353,041	324,295	299,545

Furthermore, the CFPTA notes that in the United States "consolidation amongst the networks and the major studios has led to an increase in-house production that has depressed the market … not just in the U.S. but internationally."[52]

Figure 8.20 provides more detail on how money is spent by Canada's conventional broadcasters on Canadian content programming for English-language audiences. As can be seen, the private networks consistently spend around $225 million each year on news programming and about $25 million to $35 million on sports. As for drama and comedy programming, private conventional broadcaster spending fluctuated between $47 and $80 million.

Figure 8.20 Total eligible expenditures by Canada's English-language conventional networks on Canadian news, sports and drama/comedy programming, 1997-2001



	1997	1998	1999	2000	2001
News private conv.	218,621	229,512	237,223	229,931	235,149
News: CBC	30,719	53,790	97,606	100,047	59,200
Sports: private conv.	36,281	31,426	29,901	26,727	24,952
Sports: CBC	77,935	119,302	128,455	95,031	141,046
Drama/comedy: priv.	47,576	85,211	74,450	80,229	72,270
Drama/comedy: CBC	35,945	35,325	62,016	62,407	46,212

These fluctuations can in part be explained by national and international circumstances that have in recent times impacted the production and development cycle for Canadian television programming. As the Canadian Television Fund notes in its 2001-02 activity report:

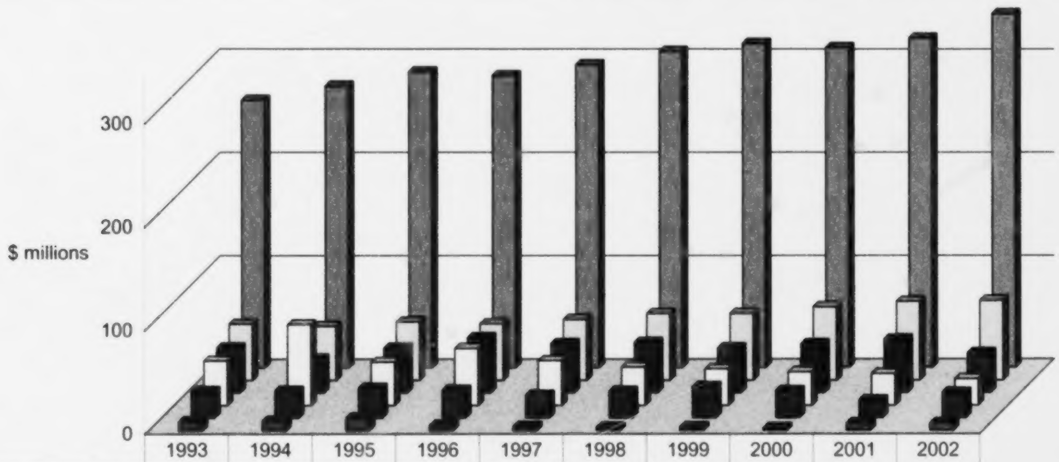
> Several factors contributed to a decrease in funding requests [in 2001-02], including fewer international sales, a shift by broadcasters into more non-dramatic programming, and big-ticket events like the 2002 *Winter Olympics* which filled up large portions of the prime-time schedule.[53]

Furthermore, as the Canadian Film and Television Production Association notes in its 2003 report on the state of the production industry, significant increases in expenditures may overestimate actual production of distinctively Canadian productions such as drama and comedy. As its report explains:

> A review of data from past years suggests that productions with eight or more CAVCO points [i.e., distinctively Canadian productions] may obtain certification more quickly than other point categories. Productions with eight or more CAVCO points may have a greater reliance on tax credits, and therefore may submit their applications faster than other productions, and consequently receive certification more quickly.[54]

For these reasons, and others, expenditures on particular programming categories will inevitably vary from one year to the next.

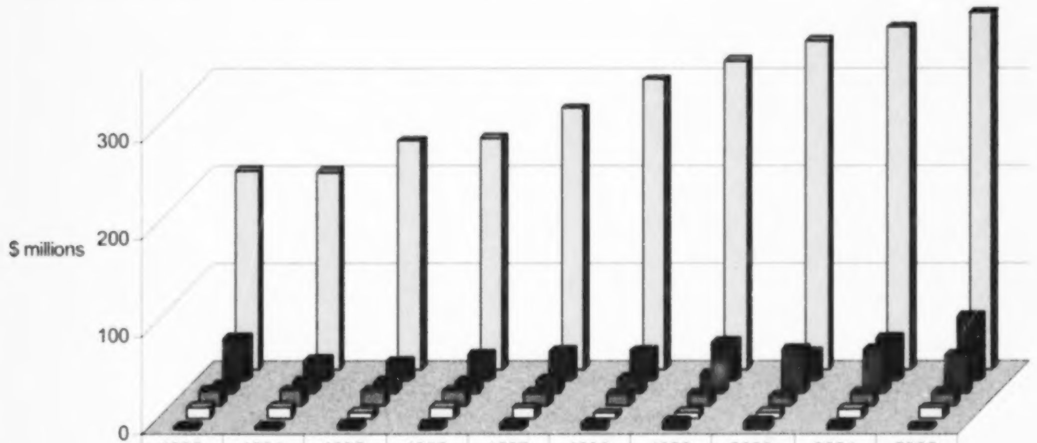
Figure 8.21 Expenditures by Canada's private television broadcasters on Canadian programming by genre, 1993-2002



	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
■ Game Shows	8.4	9.1	12	4.8	3.8	3	3.3	2.3	6.9	6.8
■ Music/Variety	25.7	26.1	28.7	26.9	21.8	25.6	30.1	26.1	17.1	24.3
☐ Sports	42.9	78.2	41.8	55.1	43.3	36.9	35.1	32.2	30.5	25.5
■ Human Interest	43.5	32.8	43.3	53.3	47.6	48.7	43.2	47.3	51.8	38.5
☐ Drama	54.4	52.1	56.7	54.6	58.7	64.5	64.6	71	76.1	77.2
■ News and information	258.9	272.5	286.3	282.7	293.2	306.1	313.9	309.9	319.1	342.6

Canada's private broadcasters also spend money on foreign program acquisition. Figures 8.21 to 8.24 show the split between Canadian program expenditures and foreign programming for 1993 through 2002.

Figure 8.22 Expenditures by Canada's private television broadcasters on foreign programming by genre, 1993-2002

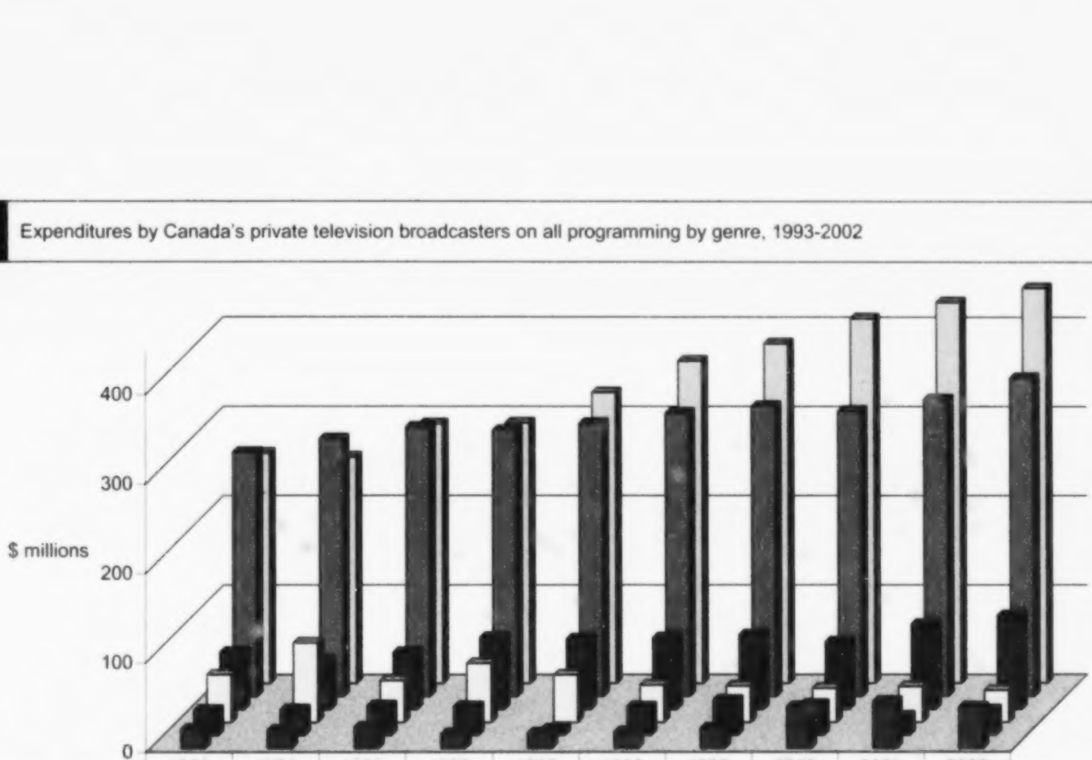


	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
■ Music/Variety	2.6	2.9	4.5	5.3	6.8	6.3	9	8.5	4.5	4.1
□ Sports	10.6	10.8	4.7	10.8	9.7	4.6	5.5	5.7	9.4	10
▨ News and information	15.1	15.7	15.3	15.1	12.5	11	10.6	9.4	13	13.4
■ Game Shows	8.4	11.2	12	11.5	13	15.3	19.1	44.4	45.6	39.3
■ Human Interest	43.5	21.4	20.5	27.3	31.2	31.4	40.3	28.6	43.4	66.4
□ Drama	203.2	201.4	234	237.2	267.1	296.7	315.9	337.4	350.5	365.7

Figure 8.24 shows that spending by Canada's private broadcasters on programming increased by more than $300 million between 1993 and 2002, with the most notable increase being in the foreign drama category, where expenditures increased by more than $150 million (see figure 8.22).

It can also be seen that overall spending on Canadian programming increased by more than $83 million between 1993 and 2002, with increases in two important areas: Canadian news and Canadian drama (see figure 8.21). At the same time, there was a gradual decline in expenditures by private broadcasters on Canadian sports.

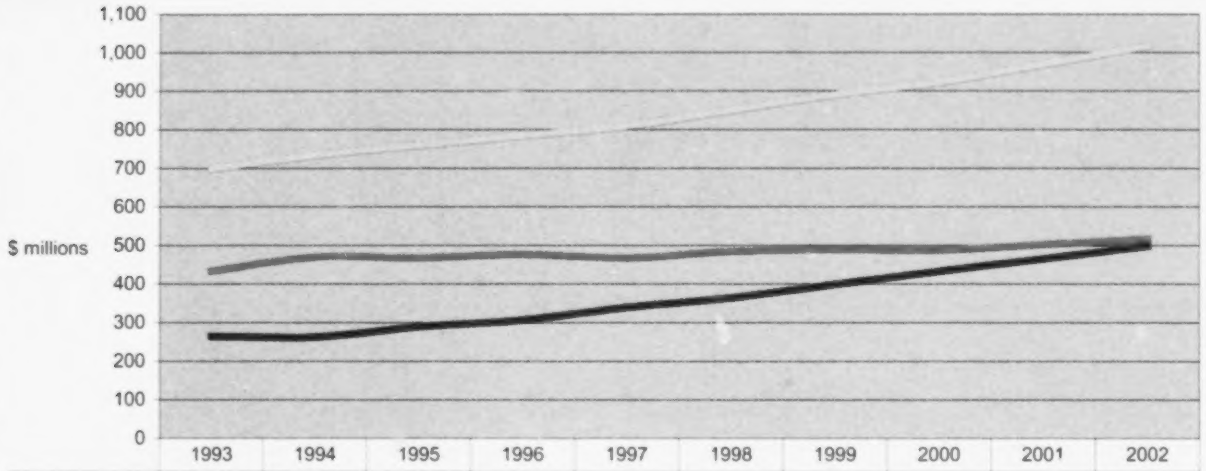
Figure 8.23 Expenditures by Canada's private television broadcasters on all programming by genre, 1993-2002



	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
■ Game Shows	21.6	20.3	23.6	16.3	16.8	18.2	22.3	46.7	52.5	46.1
■ Music/Variety	28.3	28.9	33.2	32.2	6.8	31.9	39.1	34.6	21.6	28.4
☐ Sports	53.5	88.9	46.5	65.9	53	41.4	40.6	37.9	39.9	35.5
■ Human Interest	63.9	54.3	63.8	80.6	78.8	80.1	83.4	75.8	95.2	104.9
▨ News and information	273.1	288.3	301.6	297.7	305.6	317.2	324.7	319.3	332.1	356.1
☐ Drama	257.6	253.5	290.8	291.8	325.6	361.2	380.5	408.4	426.6	442.9

These spending patterns also show that the relative weight on program expenditures shifted towards foreign programming between 1993 and 2002. Part of this shift may be explained by the increased cost of American programming and the gradual decline in the value of the Canadian dollar against the American dollar between 1993 and 2002. Whether this shift in spending says anything about the CRTC's new television policy (which is discussed in detail in Chapter 5), however, is extremely difficult to know without further analysis of the economics of Canadian programming expenditures.

Figure 8.24 Total expenditures on television programming by Canada's private broadcasters, 1993-2002 ($ millions)



	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Canadian	434	470.8	468.8	477.4	468.4	484.7	490.1	488.7	502.5	517.2
Foreign	264.9	263.4	290.6	307.2	340.3	365.3	400.4	434	466.4	499
Total	698.9	734.2	759.5	784.5	808.7	850	890.5	922.8	968.9	1016.3

What the Committee Heard

In her appearance before the Committee, the Minister of Canadian Heritage made the following observation about the role of private broadcasters in the Canadian system:

> Obviously, the notion of a private sector that is not profitable is not possible. Part of the challenge that we're going to have in looking at the whole system … if you look at the past system, in a sense, when the original regulatory process gave licensing possibilities to certain television stations, they were basically able to feed their content requirements by selling advertising in the pre-direct-to-home world.[55]

The above quote captures well the core challenge that Canadian broadcasters face; that is, the need to remain economically viable in a changing environment, while living up to the various policy and regulatory expectations that shape our system. Witnesses raised a number of challenges related to this matter, many of which are discussed in other chapters.

- Chapter 5 discusses the economic challenges of producing or purchasing Canadian dramatic series.

- Chapter 9 addresses the need for a new model to deliver local and regional programming to audiences.
- Chapter 11 considers witness perspectives on vertical, horizontal, cross-media and foreign ownership issues.
- Chapter 12 explains why a coherent plan is needed to steer the Canadian broadcasting system through the transition from analog to digital technologies.
- Chapter 16 addresses the issue of Canadians who have opted out of the Canadian television system by subscribing to grey and black market satellite services.

Two other issues raised by Canada's private television broadcasters were the long-term health of the private sector and the financial burden of Part II Licence Fees paid to the CRTC. These issues are discussed below.

The Health of the Private Sector

When the Canadian Association of Broadcasters appeared before the Committee, Mr. Glenn O'Farrell opened with the following comments:

> A broadcast licence in a given market in this country was once a very valuable piece of property, as it meant access to a controlled marketplace. However, what we may have seen as a truth even a few decades ago is no longer the case as we face a new world. That new world has increased fragmentation, where a marketplace is flooded with more and more foreign and indigenous services than ever before. The new world has new technologies that defy a 40-year-old regulatory model. The new world is one of massive consolidation among key advertising customers. Broadcasting is experiencing a serious structural shift. As business people and as public policy makers, we need to work together to develop a response that will ensure success.[56]

For these reasons, argued Mr. O'Farrell, it is essential that the private sector be recognized as a component that is complementary rather than in competition with the public sector, particularly the CBC. He explained:

> The public and private sectors must, in our view, be complementary, not competing. This already exists in radio, where a strong CBC

> radio service complements private radio. You can be in Halifax, Edmonton, or Chicoutimi, but when you tune in to CBC Radio, you know what you're listening to. They have a distinct programming voice, and we compliment those responsible for that.[57]

Several witnesses raised another important consideration. The ongoing viability of the private sector, particularly in English Canada, depends on the development of a star system, such as the one that has emerged in Quebec over the past two decades. Mr. Philippe Lapointe, Vice-President, Groupe TVA inc., illustrated this point with his account of the situation in French Canada today:

> When we look at the 30 most-watched programs on television in French-speaking Canada, we find that 28 of them were developed, manufactured and produced by people who live here for people who live here. This is a significant success that we may take somewhat for granted. People think that it stands to reason.
>
> However, when we look at the past ... we remember that in 1980-1985, French-speaking Canadians were watching mainly American programs: *Mannix, Hawaii Five-o, Dallas* and *Dynasty*. ... The most watched program in 1980-1985 was *The Little House on the Prairie* in its French version. Today, there are virtually no American programs on the French-language networks in Canada. People now watch programs made here.[58]

Thereafter, he outlined two reasons for this tremendous success story:

> First, there was the will to make successful, popular programs that appeal to people. There is a way of doing television programming that is close to people, programs that talk about the stories that are very close to the people who live here. ... There are also other important structural reasons that account for this success. Among the top 10 programs this year, 8 would not have been possible without the participation of the Canadian Television Fund. The system in place for financing Canadian television is the cornerstone. Eight of the top 10 programs were financed with assistance from the Canadian Television Fund through its two programs, the EIP and the LFP. This is an essential ingredient of our success.[59]

All this being said, Mr. Lapointe went on to warn the Committee that the successes of French television are fragile. He pointed out that advertising revenues have declined sharply from levels previously enjoyed in a less fragmented market; furthermore, Canada's private broadcasters are very dependent on the level of financing available from production funds such as the Canadian Television Fund.

As for television in English Canada, several witnesses helped shed light on the burden that Canada's English-language broadcasters face. To put matters in perspective, Ms. Loren Mawhinney, Vice-President, Canadian Production, Global Television Network, made the following observations about the English-language market:

> In the last five years we have experienced the launch of five more conventional channels and went from 20 speciality services serving Canadians to 60. Dozens of new diginets have launched this fall and their input is just starting to be felt. However, Canadians are not watching more television. As a result, the audience is simply becoming more fragmented; thus, so are the advertising dollars. It's becoming harder to afford high-cost programs as audiences are shrinking.[60]

Picking up on this same point, Mr. Alain Gourd, Group Executive Vice-President, Corporate, Bell Globemedia Inc., noted that the revenue model for television:

> … which was based on advertising … has now … changed into a model based on subscriptions. At the moment, more than half of the overall revenue of the Canadian broadcasting system comes from subscriptions, and advertising now accounts for only one third of the overall revenue. This situation is exacerbated further by fragmentation; that is more Canadian channels are fighting over a single source of consolidated advertising.[61]

For these reasons, he predicted that:

> If the trend continues, if we do not allow conventional, general television to have access to subscription revenue, we will be jeopardizing the future of the entire economic model for general television in French and in English, which is one of the main expressions of our culture.[62]

With these factors in mind, Mr. Gourd made the following recommendation:

> … given the disappearing advertising market and the reduction in the absolute rate of funding from government, we must review …

> the funding of Canadian programming production. ... the review could focus on an overall assessment of all sources of government funding — Téléfilm, the Canadian Television Fund, and tax credits — in order to develop an overall approach, an all-in-one hybrid.[63]

Taking this point a step further, Mr. Glenn O'Farrell, asked:

> ... that the Committee call on the Minister of Canadian Heritage and the Minister of Finance to strike a joint working group on the future of television program financing in Canada. We believe this is essential, and we call on you to make that recommendation so that we can find a long-term programming strategy for the financing of Canadian programming.[64]

Furthermore:

> ... we suggest it would be appropriate for the Department of Finance to streamline and simplify the tax credit system so it can be harmonized with provincial tax credit schemes. We believe an examination of the emerging economic issue of declining advertising dollars to find a subscription revenue stream for conventional television would also be appropriate.[65]

Part II Licence Fees

A request made by broadcasters (and distributors) repeatedly was that the Part II licence fees paid by the broadcasting sector be lowered.[66] The following extract from the CRTC's 2002-03 Estimates, Part III Report on Plans and Priorities explains the rationale for broadcasting licence fees:

> The CRTC collects fees under the authority of the Broadcasting Act and Telecommunications Act and the regulations made pursuant to these acts, namely the Broadcasting Licence Fee Regulations, 1997 and the Telecommunications Fee Regulations, 1995. ...
>
> The Part I fee is based on the broadcasting regulatory costs incurred each year by the Commission and other federal departments or agencies, excluding spectrum management costs, and is equal to the aggregate of: the costs of the Commission's broadcasting activity; the share of the costs of the Commission's administrative activities that is attributable to its broadcasting activity; and the other costs included in the net cost of the Commission's program attributable to its broadcasting activities, excluding the costs of regulating the broadcasting spectrum.

The estimated total broadcasting regulatory costs of the Commission are set out in the Commission's Expenditure Plan published in Part III of the Estimates of the Government of Canada (i.e., Part III Report on Plans and Priorities). There is an annual adjustment amount to the Part I fee to adjust estimated costs to actual expenditures. Any excess fees or shortfalls are credited or charged to the licensee in a following year's invoice.

The Part II fee is calculated at 1.365% of a licensee's gross revenue derived from broadcasting activities in excess of an applicable exemption limit. The CRTC collects Part II fees on behalf of the government, with all revenues collected being deposited to the Government of Canada's Consolidated Revenue Fund (CRF). Consistent with the policy objectives outlined in the government's Cost Recovery and Charging Policy (1997) and as explained in the 1999 roundtable consultation with broadcasting fee payers, the rationale for assessing this fee is threefold:

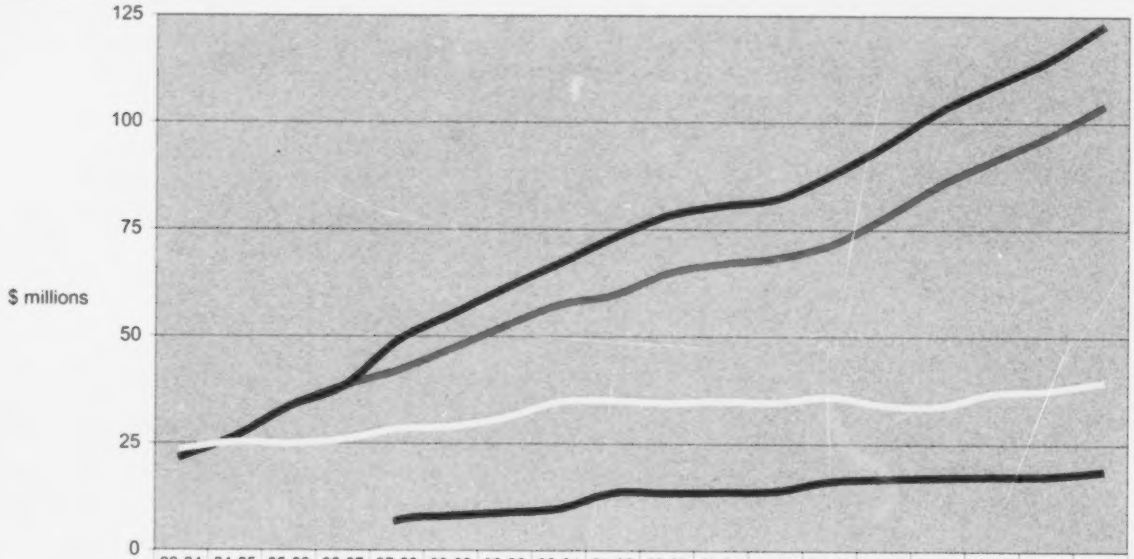
> ...to earn a fair return for the Canadian public for access to, or exploitation of, a publicly owned or controlled resource (i.e., broadcasters use of the broadcasting spectrum); to recover Industry Canada costs associated with the management of the broadcasting spectrum; and to represent the privilege of holding a broadcasting licence for commercial benefit.

Figures 8.25 and 8.26 show the trend in licence fees, for broadcasters and telecommunications companies for the period 1983-84 through 2001-02.[67] As can be seen, the private broadcasting sector paid $82.1 million in Part II fees in 2000-01, which even in isolation, was more than double the operating expenditures of the CRTC. In contrast, Canada's telecommunications sector paid just $18.7 million in licence fees in 2000-01.

In light of these comparative data, it can be understood why private sector broadcasters were asking the government to either lower or eliminate Part II licence fees. As Mr. Glenn O'Farrell explained:

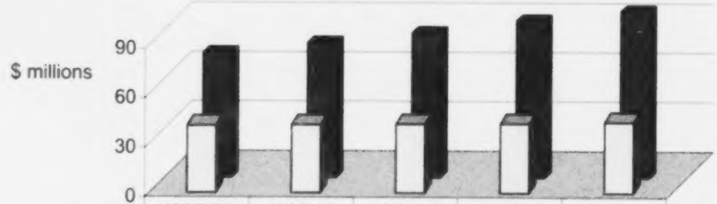
> ... we ... face what we would call self-defeating pieces of public policy that impede success rather than favour success. An example of that is how the CRTC collects fees. The commission regulates both broadcasting and telecom. The licence fees for telecom are assessed on a cost-recovery basis, while broadcasting licence fees annually run almost $90 million over the CRTC costs. We believe this is a prejudicial tax that takes resources away from content.[68]

Figure 8.25 Trends in CRTC licence fees paid by the private broadcasting sector and the telecommunications sector, 1983-2001



	83-84	84-85	85-86	86-87	87-88	88-89	89-90	90-91	91-92	92-93	93-94	94-95	95-96	96-97	97-98	98-99	99-00	00-01
Broadcast licence fees	21.8	26.6	33.6	38.4	42.1	47.1	52.5	57.4	59.7	64.8	67	68.3	71.4	77.9	85.4	91.2	96.8	103.6
Telecom licence fees	0	0	0	0	6.9	8.1	8.9	9.8	13.5	13.5	13.7	14	16.3	16.9	17.2	17.5	17.6	18.7
Total CRTC fees	21.8	26.6	33.6	38.4	49	55.2	61.4	67.2	73.2	78.3	80.6	82.2	87.7	94.7	102.7	108.7	114.4	122.3
CRTC operating costs	23.6	25.3	25	26	28.4	29	31.1	34.8	35.1	34.6	35	34.7	36	34.1	33.9	36.9	37.6	39.5

Figure 8.26 Part I and Part II broadcast licence fees paid to the CRTC by Canada's private broadcasters and distributors, 1997-2002



	1997-98	1998-99	1999-00	2000-01	2001-02
☐ Part I fees	20.3	21.3	21.6	22.2	22.3
■ Part II fees	62.9	69.7	75.5	82.1	88.7

During Committee hearings, the CAB also suggested that the reduction or elimination of Part II fees would free up money for spending on Canadian content. For example, when a Committee member asked if the CAB would support a recommendation that the government allocate the money to the CTF or Telefilm, the CAB's response was:

> ... on the licence fee issue, that is not a revenue item but an expenditure item. Obviously that would fall directly to the bottom line of every broadcaster who would no longer have that expenditure to incur. That would free up those resources.
>
> Certain broadcasters may choose to put that into local programming. Others may choose to put it into regional programming. Others may choose to put it into priority programming.
>
> The problem ... with the fund is that it has limitations on the use of the funds for program types; and secondly, in fact it's producers who access the CTF, and not broadcasters.[69]

In short, broadcasters described their licence fee payments as "excessive" and used several arguments to back up this claim: first, the fees are far above the costs of operating the CRTC; second, they are a double tax; third, private broadcasters are subjected to other financial burdens (e.g., required benefits expenditures upon major ownership changes and the high cost to purchase or produce Canadian programming content).

Proposed Solutions

Overall, the Committee appreciated the testimony of the private television broadcasters and their commitment to the Canadian broadcasting system. In particular, **the Committee applauds the successes of the French-language market and agrees that the initiatives undertaken to develop a star system have been extraordinarily successful**. At the same time, it recognizes that these successes are delicately balanced and that they will require forward-thinking policies and programs if French-language Canadian programming is to enjoy similar successes in the years to come.

As for the English-language television market, the Committee is concerned by its current situation. In particular, it is very worried that the existing programming model — which has become overly reliant on the cross-subsidization of Canadian programming through revenues

The Success of Star Académie

For nine consecutive weeks between late February and late April 2003, the program *Star Académie* broadcast by the TVA network once again confirmed the extraordinary appeal of popular television programs among viewers in Quebec. The runaway success of this series, whose ratings exceeded 50% of the Quebec population has never been seen in North America, or the rest of the world, for that matter.

The popularity of *Star Académie* is reminiscent of certain episodes of made-in-Quebec television series, such as *Les Filles de Caleb, Blanche, Scoop, Lance et compte* and *La Petite Vie*, which had similar ratings. Quebec's infatuation with its performing artists is well known; however, in the case of *Star Académie*, the 14 members of the "Académie"; that is, the stars of the show, were initially unknown to Quebec viewers. It is also interesting, if not surprising, that the winner of the competition, as chosen by Quebec viewers, was Wilfred LeBouthillier, a native and resident of Tracadie-Sheila in New Brunswick. Will he follow in the footsteps of Roch Voisine?

Star Académie is not a new television format. On the contrary, numerous similar formats have been espoused by the American and European networks in recent years. While the formula itself was not new, the viewer ratings achieved by TVA, certainly were. Nothing even vaguely resembling the ratings achieved in Quebec has ever been achieved in the United States or Europe.

An article written in the 26 April 2003 edition of La Presse, under the byline of Hugo Dumas, asked the question, "How did this happen?" Mr. Dumas reported that [*translation*] the *Star Académie* tornado had blown the audience monitoring device, and that record sales have been swept away." The article written by Mr. Dumas contains figures that say a lot about the nearly unprecedented success of *Star Académie*. Approximately 60% of the television viewers who followed the series were female, and about 20% were under the age of 25. Viewers between the ages of 35 and 54 accounted for 36%, while those 55 and older accounted for 30% of the viewership. According to a survey conducted by Impact Recherche, one in two Montrealers watched *Star Académie*.

The members of the "Académie" recorded an album of the songs they sang during the series. Some 500,000 copies of the album were shipped to stores. It is estimated that approximately 400,000 copies have been sold to date. In April, *Star Académie* was

generated by American programming — will eventually collapse. It was heartened, however, by the testimony of CAB representatives — both in hearings and in-sites visits across this country — that these broadcasters recognize that the future of English-language television in Canada depends on the production of high-quality productions that are made for Canadian audiences. Furthermore, the Committee was pleased to hear that the English-language market is working to emulate the star system developed in French-Canada as one strategy to help build audience size and loyalty for English-language Canadian programming.

With these considerations in mind, there are several issues that were raised by the private broadcasters where the Committee agrees that immediate action is required. While most of these points are dealt with in other chapters of this report, there are two that merit discussion here. These are: signal fees for conventional broadcasters and Part II licence fees. The next section discusses signal fees. Since cable and satellite service providers also asked for the elimination of Part II fees, this matter is discussed following the section on distribution.

Conventional Signal Fees

In the early decades of television broadcasting in Canada and the United States, advertising was the primary source of revenue for private broadcasters. Cable changed that by introducing subscriptions as an alternative revenue stream. The licencing of new pay and specialty channels also put pressure on the advertising-based business model of conventional television as viewers shifted their attention to these new services. The result of this, as noted in an earlier section, was that subscription revenues became more important than advertising revenues for the first time in Canadian television in 1991.

In parallel with the pressure on ad revenues due to audience fragmentation have been recent technological innovations, which have lowered the value of advertising on conventional networks. The most notable example is the personal video recorder (PVR), which allows viewers to skip through ads — or even eliminate them entirely.

Given these changes, it can be seen why conventional broadcasters are looking for new revenue streams. Some have purchased specialty channels, a move that gives the parent organization some subscription revenue; but the groups today — for example, CTV and its related specialty channels — have not regained the viewing share they once enjoyed in the days before fragmentation. This explains why conventional broadcasters believe they deserve a share of the subscription fees that are already collected for pay channels, specialty channels and the distant signals of conventional broadcasters.

The Committee recognizes that the broadcasting marketplace has evolved considerably since the early days of broadcasting and that the value of a conventional licence is not what it once was. That said, without further study of the consequences of such a fee on subscribers and on the broadcasting system as a whole, the Committee does not feel prepared to recommend immediate action in this area.

The Committee realizes that such a fee would have consequences for subscribers, but several Members noted that it is quite simply a matter of fairness. It is of the view, however, that conventional broadcasters — if such a fee were implemented — should be required to commit a certain portion of this new revenue stream to the production of high-quality, distinctively Canadian programming. The Committee also believes that such a fee, if implemented, should apply to the CBC. Indeed, this fee would represent a new revenue source for the Corporation and, by extension, would allow for the production or purchase of new Canadian programming.

E. Distribution

Broadcasting distribution undertakings (BDUs) play a key role in the Canadian broadcasting system, with over 9.3 million of Canada's 12.3 million households enjoying such services. As noted in Chapter 3, one of the first technological innovations used by broadcasting distributors was cable, which allowed for an increase in the number of available programming services. Introduced in London Ontario in 1952, cable distribution went through a phenomenal expansion between 1965 and 1975. By the end of that period, 60% of Canadian households subscribed to cable; by 2001, that figure had reached 71.9%.[70]

In 1997, the CRTC licenced Bell ExpressVu and Star Choice to offer direct-to-home (DTH) satellite service. These programming services are "multichannel services using high-powered satellites beaming digitally compressed signals receivable with small, fixed, 'pizza-sized' dishes."[71]

the most listened to album in Canada, beating out Céline Dion, Norah Jones, Avril Lavigne and Linkin Park.

A number of factors contributed to the outstanding success of *Star Académie*, in particular, the obvious talent of the participants, and the professionalism and "magic touch" of Julie Snyder, the host and producer of the show. Broadcasting this upbeat program, in which singing reigned supreme, during a worrisome period marked by the war in Iraq and the outbreak of Severe Acute Respiratory Syndrome (SARS) proved to be a wise move that most likely contributed to the warm reception it received from the public.

CTV and The Juno Awards

In April 2003, international mega-star Shania Twain greeted a sold out crowd at the Corel Centre in Ottawa-Gatineau. Emerging as host of The *2003 Juno Awards*, her mere presence alone symbolized, that, like herself, the Junos had skyrocketed to the big time. In fact, *The Juno Awards* has fast become the hottest Awards showcase in Canada, and on that night, you could literally feel the electricity in the air. By the time the show was over, 17,000 screaming fans had witnessed one of the most exhilarating, star-studded nights in Canadian music history. Across the country, the broadcast had captured an astounding 2.2 million viewers, 53% more viewers than the preceding year and incredibly, more viewers than either the *Grammy Awards* or the *American Music Awards* in Canada. In just two short years, CTV had not only turned *The Juno Awards* around, but also repositioned it as the jewel in the crown of music awards shows in Canada.

CTV's strategy for a successful Juno franchise relied heavily on an integrated on-air promotional campaign tied in with a national public relations campaign. The Junos became the Network's top priority and viewers noticed. With a three-month lead-in window, Canadians saw fresh, creative, original campaigns across the country. CTV's news and entertainment properties — including *CTV News*, morning star *Canada AM*, late night hit *Open Mike with Mike Bullard* and daytime entertainment stalwart *eTalk Daily* — each supported the *Juno Awards* broadcast with their own on-going, extensive coverage. CTV's on-line partner Sympatico, teamed up to offer high speed subscribers exclusive Web-casts of Juno-nominees in concert. The CTV promotions team developed multi-regional and national contests,

partnering with *The Globe and Mail*, who also provided coverage of the Junos themselves.

CTV's approach was based on the previous year's success story that saw the *Juno Awards* exported to Canada's East Coast for the first time. CTV's *The 2002 Juno Awards* from St. John's, Newfoundland pulled the show out of a three-year ratings slide with the help of hosts the Barenaked Ladies and a performance lineup that would make any Grammy Award producer envious. Canadians tuned in to a refreshingly energetic, youthful and star-studded Juno Award broadcast to the tune of 1.4 million viewers — a 24% leap from the previous year. Close inspection of audience data revealed that audiences were younger than ever before.

The incredible success of the past two Juno Awards broadcasts by CTV demonstrates that it is possible to attract large audiences to Canadian entertainment programming. CTV plans to build on these successes for its next broadcast of the Awards in 2004.

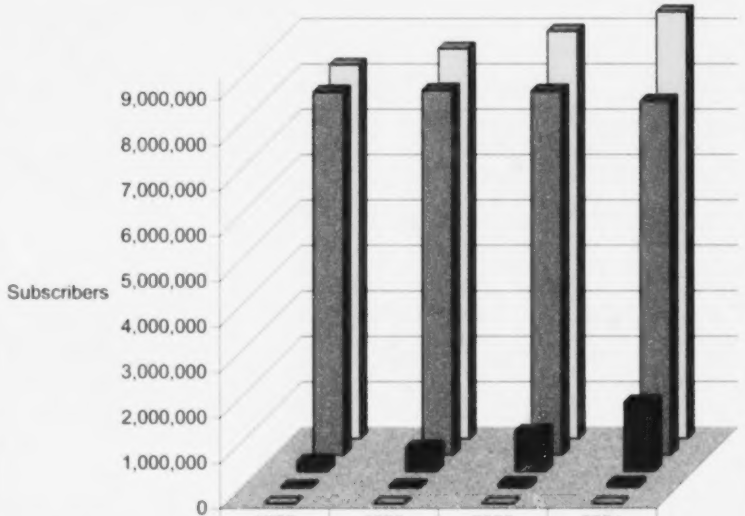
DTH satellite services were the first broadcasting companies that were allowed to compete with the cable distributors.

The emergence of digital signals is also having an important impact on the Canadian broadcasting system. Four types of broadcasting distributors offer digital transmission: cable operators, DTH satellite, telephone companies, and multipoint distribution systems[72] (Look TV, Image Wireless Communications and SkyCable).[73] Overall, there were 1,985 cable systems, two satellite service providers and 27 other distributors of television services in Canada in 2002.

Subscribers

The arrival of the DTH satellite distributors in 1997 ended the cable distribution monopoly in Canada. Figure 8.27 shows how rapidly DTH satellite service providers have established a foothold in the marketplace. Between 1998 and 2001, DTH market share increased from 2.6% to 16.2%. Meanwhile, cable dropped from a 97.2% share to 82.9%.

Figure 8.27 Subscribers to Canadian broadcasting distribution undertakings, 1998-2001

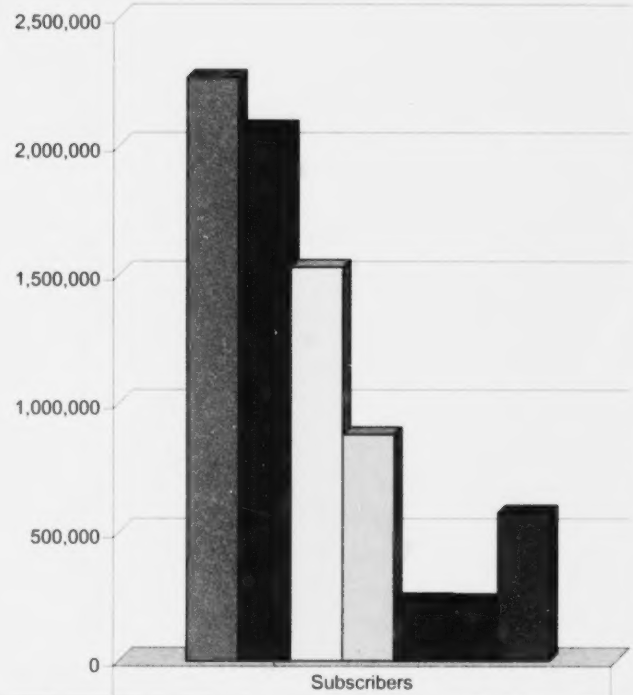


	1998	1999	2000	2001
□ STV	6,333	3,882	2,678	1,344
■ MDS	10,894	31,551	83,913	86,773
■ Satellite (DTH)	216,111	519,376	880,092	1,519,620
■ Cable (Class 1,2,3)	7,989,529	8,025,845	8,006,181	7,785,242
□ Total	8,222,867	8,580,654	8,972,864	9,392,979

Ownership

Figure 8.28 shows the top six cable ownership groups in Canada. Overall, the top three (Rogers Cable, Shaw Communications and Vidéotron) dominate cable television distribution with a market share that accounts for more than three-quarters of all Canadian cable subscribers. Moreover, the top six have a market share of 93%.

Figure 8.28 Top six Canadian cable distributors by subscribers, 2001



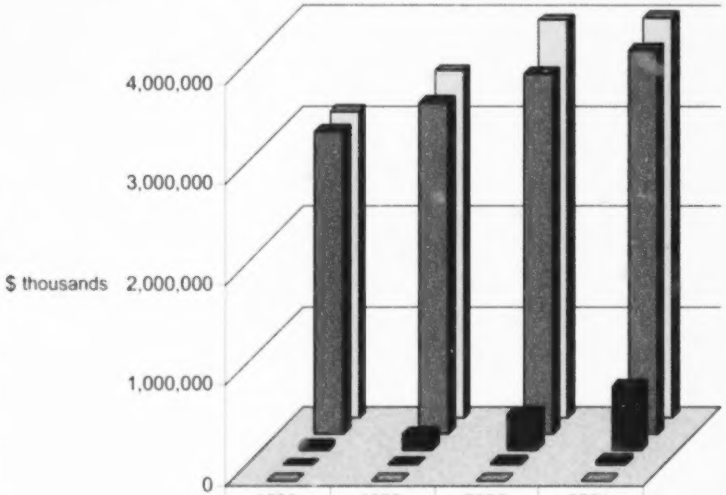
	Subscribers
■ Rogers Cable Inc.	2,266,703
■ Shaw Comm. Inc.	2,070,022
□ Vidéotron Ltée.	1,528,560
□ Cogeco Cable Inc.	878,766
■ Bragg Comm. Inc.	233,154
■ Persona Comm. Inc.	231,900
■ Other companies	576,137

Total subscribers, top six cable companies: 7,209,105 (93%)
Total subscribers, all Canadian cable companies: 7,785,242

Revenues and Profits

Figure 8.29 shows that there has been a steady and strong growth in BDU revenues over the past few years. Between 1998 and 2001, revenues increased from about $3.1 billion to more than $4.5 billion, representing a 50% increase in just four years.

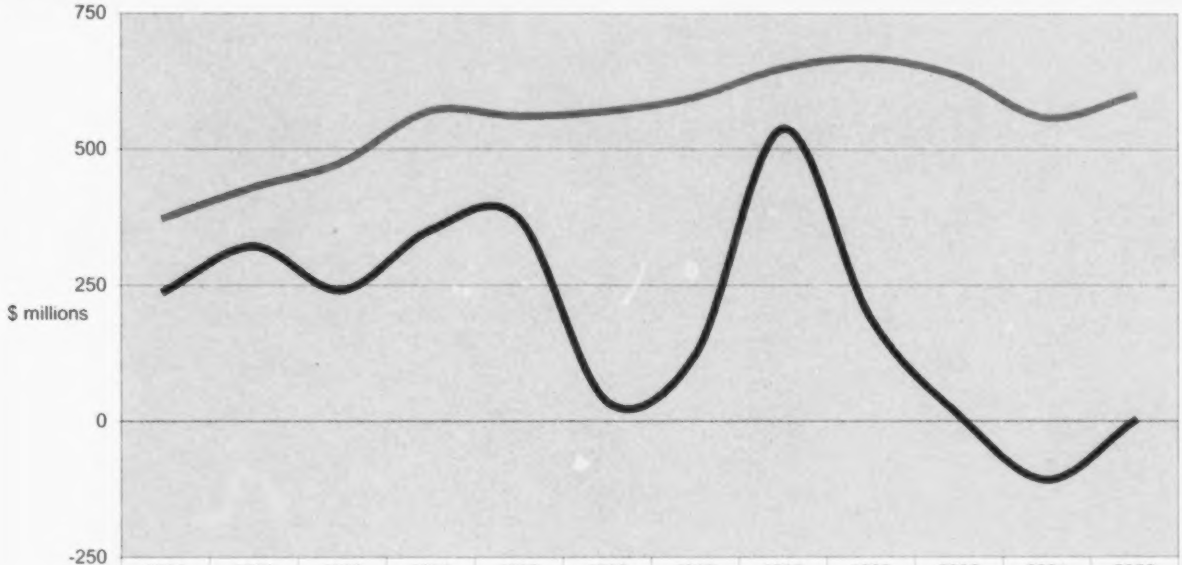
Figure 8.29 Revenues for Canada's broadcasting distribution undertakings, 1998-2001



	1998	1999	2000	2001
☐ STV	1,626	1,574	1,033	490
■ MDS	4,525	11,314	29,837	45,425
■ Satellite (DTH)	38,570	154,270	358,862	632,901
▨ Cable (Class 1,2,3)	3,014,247	3,302,061	3,582,125	3,828,796
☐ Total	3,058,968	3,469,219	3,971,857	4,507,612

Revenue figures by themselves, however, can be misleading. Figures 8.30 and 8.31 present two measures of the profitability of distributors. For the large cable distributors, profitability, as indicated by the most commonly used measure, the margin on profits before interest and taxes (PBIT %), has declined since 1998. This decline is even greater if allowance is made for the large interest payments made by the capital-intensive cable industry and the margin on profits before taxes (PBT %) is used.

Figure 8.30 Total profits (losses) in Canadian cable (Class 1 and 2 only), 1991-2002

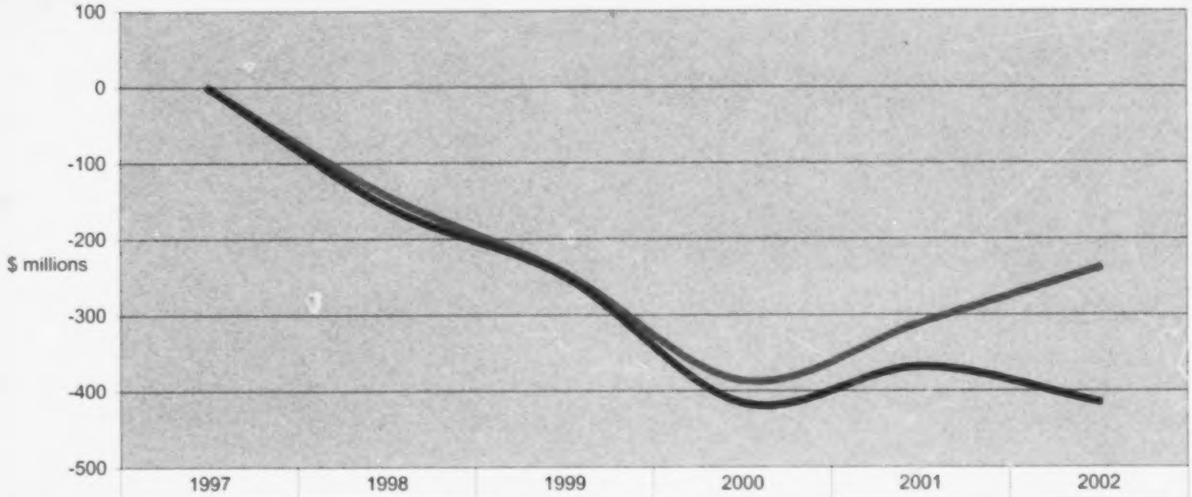


	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
PBIT	374.2	430	475.5	570.3	561	570.1	595.8	649	667.1	635.3	559	599.9
PBT	240.4	322.1	241.1	351.7	373.9	36.7	122.4	538.2	189.4	11.7	-107.3	0.6

PBIT = Profits Before Interest and Taxes (and adjustments)
PBT = Profits Before Taxes (but after adjustments)

Another measure of profitability for cable — not shown in the figure — is the return on average net fixed assets. This, too, has declined since 1998, going from 20.59% in 1998 to 10.64% in 2002. Part of the reason for decreasing cable profitability has been the increased competition from alternative distribution services, primarily satellite (DTH). Canada's DTH services, due to the large capital expenditures required to launch their services, have yet to show any profit.

Figure 8.31 Total profits (losses) in Canadian DTH satellite and multipoint distribution, 1997-2002



	1997	1998	1999	2000	2001	2002
PBIT	-2.2	-142.4	-244	-385.9	-310.5	-237.8
PBT	-1.4	-156.9	-249.1	-415.6	-368.1	-414.2

PBIT = Profits Before Interest and Taxes (and adjustments)
PBT = Profits Before Taxes (but after adjustments)

What the Committee Heard

As noted earlier on, there are nearly 2,000 cable distributors and 2 large satellite distributors in Canada. There is also Telesat Canada, a satellite, communications and systems management company. The main issues raised by these groups included: the recognition of competition and consumer choice as principles in the Broadcasting Act; regulatory inequities; a recognition of the challenges facing small systems; the cost of capital; and legislative change to respond to the grey and black markets.

Cable Industry Concerns

In her appearance before the Committee, Ms. Janet Yale, President and Chief Executive Officer of the Canadian Cable Television Association (CCTA), highlighted the size and importance of the cable industry in Canada:

> The cable industry has played an important part in the success of the Canadian broadcasting system. The (...) large and small licensed cable systems active in cities and towns in every part of this country now serve approximately 7.6 million households. Cable television is received in more than 70% of homes passed by cable throughout Canada.[74]

Ms. Yale also pointed out the extent to which the cable industry has been making an investment in Canada's communications and new media infrastructure:

> The industry investment in digital cable and high-speed broadband services is significant. As an industry we spend an average of 1 billion dollars annually on capital expenditures. ...
>
> The result of these investments is that our advanced infrastructure now reaches more than 75% of Canadian homes passed by cable, including urban and rural areas, and giving Canada the enviable position of being one of the most connected nations in the world. Through our investments, we built a broadband network that can provide 7.9 million households with access to digital cable and to cable high-speed Internet service. We serve today approximately a million digital customers and 1.5 million Internet customers. Looking to the future, we're already building the digital platforms for the next generation of services.[75]

But the provision of cable and Internet service does not come without costs to customers. In this regard, Ms. Yale made the following point:

> Let me clarify. We pay for the services we carry. The cable industry collects the fees, and they get distributed back to the programming of services. As we pointed out in our presentation, the vast majority of the revenues that those programming services receive is from cable subscription fees, not from advertising revenues.
>
> So you have to think of cable rates as really a collection of payments to a series of programmers who we carry, and if you factor in that all the new services are services for which we have to pay the fees for carriage, and if you look at the authorized rates for those services, that accounts for the increase. It's a value-for-money equation. What you pay for is certainly not what you got 10 years ago.[76]

Moving on to more specific challenges, Ms. Yale, echoed many of the same arguments made by Canada's private broadcasters concerning the

CRTC's Part II licence fees. Part II fees, in the view of her industry, she argued, go well beyond what is required to cover any administrative costs. Moreover:

> … we already pay … taxes. I'm not sure what taxes you think we don't pay. There are municipal taxes and income tax … it's not as if the industry is subject to any lesser a degree of taxation than any other industry in this country. … over and above that, we pay the costs of regulation. The entire costs of operating the CRTC, both in telecommunications and in broadcasting, are recovered from the parties that appear. All the licensed undertakings pay in the [P]art I fees the direct costs of regulation.[77]

For these reasons, it was the position of the CCTA that:

> [P]art II fees, which generate a great amount of money, which are not directly related to the costs of regulation. … could be better spent by the companies on issues such as fighting the black market, infrastructure investments, community programming, and so on rather than being a general contribution to the Consolidated Revenue Fund over and above whatever other taxes we pay. That money should no longer be collected in the [P]art II fees.[78]

A second issue raised by the cable industry concerned a practice known as time shifting.[79] As Mr. Dean MacDonald, Senior Vice-President, Rogers Communications Inc., told the Committee:

> Time shifting is part of the milieu of product offering right now. The biggest difference between cable and satellite is really more in regulatory packaging and linkage rules. The satellite people have more flexibility in terms of how they can package the product to customers versus how cable can. It's certainly something we'd like to see levelled.
>
> For instance, to put it in magazine jargon, a satellite customer can go in, pick a magazine, and leave the store, whereas in some instances when the cable guy goes in to buy a magazine, he can't leave the store without buying another magazine. It's an imbalance we would like to see changed….[80]

A third issue (which is discussed in more depth in Chapter 11) was the need for foreign capital to finance the growth of the infrastructure. As Mr. Yves Mayrand explained:

> … we completed a very major financing. It was the equivalent of over $410 million Canadian. That financing was essentially required to support our capital investment programs in building the infrastructure. This is expensive hardware we are talking about here. It is wiring direct to the home, pushing down fibre, putting in two-way, adding complex electronics, and interconnecting all these systems. …
>
> That is very expensive. It requires investment. Our industry is capital hungry. If we look at what is available in terms of pools of capital in this country, I can tell you, just by way of example in our case, that we just could not have arranged that financing in the Canadian market last fall. Not possible. We explored that possibility, but it was just not there.[81]

Finally, a fourth issue raised by the cable industry was the survival of the smaller cable companies. The value of these smaller systems to the overall health of the industry was explained to the Committee by Mr. Dave Baxter, the President of WestMan Communications Group, in the following way:

> Small cable systems in Canada provide service to less than 10% of Canadian homes, but provide tremendous leverage for achieving Canadian cultural objectives. Viable small cable systems that can compete and diversify will be in a position to continue serving rural areas with community programming, high-speed Internet access, and other future interactive services.[82]

He further noted that companies such as his take:

> … particular pride in the high level of community-based programming it provides through a substantial funding commitment and the commitment of volunteers. We have extended community programming to 19 communities, even though we're only required to provide community programming to our two largest communities.[83]

That being said, Mr. Baxter highlighted a number of challenges for smaller systems. These include: geographic remoteness, small customer base, smaller cable network capacity, capital and financing requirements, government regulation, and competition with legal and illegal satellite services. Furthermore:

> If television broadcasters continue to abandon rural areas or increasingly deliver urban-based programming to these areas, the importance of local community programming will increase to fill this void. Being able to sell advertising on the community channel as well as on "ad avails" would help small cable operators to maintain their financial ability to continue, and perhaps strengthen, their community programming focus.[84]

In short, it was the view of Mr. Baxter that:

> The situation for small cable operators is very tough, and some operators are even curtailing or shutting down their operations, leaving satellite as the only distribution choice for these customers. In order for small cable systems to remain viable, they need to be competitive and to diversify. For this to happen, a regulatory framework that facilitates sustainable competition in rural areas is needed for both broadcast distribution and telecommunications.[85]

For these reasons, he argued that there is a pressing need for greater regulatory flexibility if smaller cable companies are to survive. In particular, there is a need for:

> … more signal packaging and pricing flexibility in order to be able to compete. For example, the requirement for smaller cable systems to carry signals on a mandatory basis hampers their financial ability to remain competitive so we can continue to expand our services, including community programming and high-speed Internet.[86]

In light of the above challenges facing the cable industry, the CCTA made the following policy proposal to the Committee:

> In this environment, the policy objectives of Canadian content and programming diversity don't lose their importance. … Few would dispute the benefits that competition has brought to the broadcasting system and to Canadian consumers. These benefits include greater choice, diversity and funding for Canadian programs. …
>
> The ultimate success of the Canadian broadcasting system and the satisfaction of consumer demand are intrinsically linked. Canadians … are increasingly demanding the ability to choose what they want, when they want, and where they want. The *Broadcasting Act* must be updated to reflect this new reality. Therefore, CCTA recommends that competition and consumer choice be incorporated expressly into the policy objectives of the *Broadcasting Act*.[87]

Satellite Service Provider Concerns

Mr. David McLennan, President and Chief Operating Officer, Bell ExpressVu, characterized Canada's satellite service industry in the following manner:

> Since the launch of Bell ExpressVu and Star Choice a little over four years ago, the two companies have grown very rapidly. In total, the two companies have almost 2 million subscribers, representing just about 15% of the TV households in Canada. Bell ExpressVu itself has a little over 1.1 million subscribers. To make this happen, the shareholders of both Bell ExpressVu and Star Choice have made considerable investments totalling more than $2 billion.[88]

And these investments, argued Mr. McLennan, have made a significant contribution to the transition from analog to digital technologies. In this regard, he noted that without direct-to-home satellite services:

> … digitization would have seen a much slower rollout across the country. Right now, the two satellite providers have about a 65% market share of the digital subscribers in Canada. As a result of this, customers, programmers, and the broadcasting industry as a whole have enjoyed significant benefits.[89]

That said, Mr. McLennan was quick to note that it remains to be seen whether DTH satellite can be economically viable in the longer term. He observed that despite:

> … growth in the marketplace, the financial viability of DTH requires substantial scale, and we're not quite there yet. Obtaining scale is challenging in a country the size of Canada, with only 12 million TV households and a market dominated by cable.[90]

For this reason, like his cable industry counterparts, he urged that there be:

> … a stable regulatory framework. Otherwise, it becomes very difficult to attract the kind of investment we need and to make the kinds of business investment decisions that we need to make in order to move forward and achieve critical mass.[91]

Furthermore:

> ... given the challenging economics that we all face, regulatory financial obligations need to be examined. Specifically, those that do not advance the Canadian broadcasting industry should be eliminated. Here, I'm specifically referring to the part II licence fees, something I believe you've heard about from the Canadian Association of Broadcasters and the CCTA.[92]

He explained:

> ... funds such as the funds now being used for part II, along with other similar kinds of resources, could be better deployed into investments that continue to evolve our product and allow us to bring innovative services that add to the broadcast system.[93]

Telesat Canada, a wholly owned subsidiary of BCE Inc., also appeared before the Committee. Created through a 1969 Act of Parliament, Telesat launched the world's first commercial domestic communications satellite placed in geostationary orbit, the Anik A1 in 1972. It is a leader in satellite and communications and systems management. As Mr. Paul D. Bush, Telesat's Vice-President explained:

> To quantify our involvement in the Canadian broadcasting industry, I have a couple of facts to leave you with. As I mentioned, 95% of the broadcasting signals in Canada are delivered on the Anik and Nimiq satellites. Our facilities deliver both to cable and to DTH, and with 8.5 million cable households and the almost 2 million DTH households, that pretty well equates to the one-in-ten rule observed in the U.S....
>
> Our satellites and our teleport infrastructure provide essential services for the national broadcasters, CBC, Global, and CTV. They also provide essential services into northern communities. In many instances in Canada, due to our landscape and our population distribution, getting fibre and different types of facilities in is obviously very difficult. Satellite bridges that gap, and the broadcasters use 70% of our satellite capacity.[94]

Mr. Bush also noted that Telesat operates in a global market and that Canadian regulations make it less competitive with non-Canadian companies:

> ... While Telesat operates in a liberalized WTO environment, we're subject to more policy objectives, greater regulation, and significantly higher regulatory fees than our competitors. As an

> example, we pay annual licence fees to use the orbital slots in Canada. For Nimiq — and this is directly flowed back to the broadcasters — the licence fees are $2.1 million per year, while the equivalent licence fees for an American DBS operator are $100,000 per year. So there are significant differences in the fees that we pay versus those paid our competitors.[95]

For this reason, he urged that telecommunications and broadcasting objectives and regulations be coordinated. He also urged that something be done about the grey market and black market satellite services in Canada as its numbers suggest that licenced Canadian satellite services could be losing $20 million to $30 million a month because of this problem.

Proposed Solutions

Many of the issues raised by distributors are dealt with in other chapters of this report. For example: Chapter 9 makes several recommendations concerning the need for a uniform policy framework for the distribution of programming services by cable and satellite; Chapter 9 also makes several proposals that would help smaller cable companies fund and augment the provision of certain programming services; Chapter 11 makes a recommendation concerning foreign ownership; Chapter 16 talks about the grey and black satellite market; and, Chapter 19 makes several recommendations designed to better coordinate broadcasting and telecommunications policy. The issues of competition and consumer choice, satellite licence fees, and Part II licence fees are discussed below.

Competition and Consumer Choice

The Committee sympathizes with the concerns of Canada's smaller cable operators. It notes that several members visited a small cable co-operative — Access Communications — during their visit to Regina and were told first hand how difficult it has become to provide service of equal quality to those services offered by Canada's larger BDUs. For this reason, the Committee appreciates why smaller cable operators have asked for greater flexibility in signal packaging and pricing, and understands why the CCTA has proposed incorporating the concept of "competition and consumer choice" as a policy objective of the *Broadcasting Act*.

The Committee notes, however, that the *Broadcasting Act* already includes a provision, which states that private broadcasters should be "responsive to the evolving demands of the public." In the Committee's view, this particular principle is an implicit recognition of competition and consumer choice. Indeed, the very notion that the private sector is included in the Act is a *de facto* acknowledgement that competition and consumer choice are recognized — and expected — to be part of the Canadian broadcasting system.

Satellite Licence Fees

On a related point, the Committee was troubled to learn that Canada's satellite companies feel that they pay annual licence fees for orbital slots that are disproportionate when compared with the rates paid by their American counterparts, with whom they are in competition. The Committee recognizes, however, that it would be premature without further study to take a position on this particular matter; moreover, this question falls outside the mandate of this committee's study. Accordingly, the Committee is of the view that the federal government should undertake a study of such fees to ensure that an undue burden is not being imposed on Canadian satellite companies, which might, by extension, be impeding their capacity to compete internationally.

RECOMMENDATION 8.3:

The Committee recommends that the appropriate department study the annual orbital slot licence fees charged to Canada's satellite companies to ensure that they do not place an unreasonable burden on the capacity of these companies to compete internationally.

If a decision is made to significantly reduce these fees, a reasonable portion of any savings should be passed on to broadcasters, distributors and consumers.

Part II Licence Fees

After considerable deliberation, the Committee has concluded that there are valid reasons to question the intent and purpose of Part II licence fees. It is concerned that these fees may constitute an additional

tax (or levy) that has been imposed on both broadcasters and distributors. As discussed above, there are rationales for the Part II licence fees based, in part, on the value of the spectrum to broadcasters and the privilege of holding a broadcasting licence for commercial benefit.[96] In the light of technological advances and fragmentation these rationales may be weaker today than in the past. Furthermore, the Committee notes that the Minister of Canadian Heritage is on record as having suggested that these fees need to be reviewed.

The Committee is also aware that total licence fees paid by broadcasters — Part I and Part II — have risen much faster than prices since the last revision of the Broadcasting Act. These fees are now much higher than the cost of operating the CRTC and much higher than the licence fees charged to telecommunications companies.[97] The Committee, however, does not feel it would be prudent to simply recommend the elimination of Part II fees at this time. It is of the view that this matter requires serious analysis by the Department of Finance and the Treasury Board to determine the rationale and fairness of these fees. For this reason:

RECOMMENDATION 8.4:

The Committee recommends that the Department of Finance and the Treasury Board, in conjunction with the Department of Canadian Heritage and the CRTC, study the rationale and fairness of Part II licence fees that are currently charged to broadcasters and distributors with a view to their elimination if found to be discriminatory. The results of this study should be reported to Parliament within one year of the tabling of this report.

The Committee realizes that the eventual elimination of Part II fees may be a matter of fairness and would not automatically compel Canada's broadcasters or distributors to commit more money to the Canadian broadcasting system. On the other hand, the Committee is concerned about the need for additional revenue sources that contribute to Canadian programming. As such, it feels that at least some portion of these monies could and should be redirected into the Canadian broadcasting system, particularly for the production of high-quality Canadian programming. For this reason, the Committee believes that the CRTC could negotiate commitments from broadcasters and distributors to reinvest money into the Canadian broadcasting system should these fees be eliminated at some point in the future. With this in mind:

RECOMMENDATION 8.5:

If it is determined that Part II licence fees should be eliminated or reduced, the Committee recommends that the CRTC, in consultation with the Department of Canadian Heritage and relevant broadcasting industry stakeholders, be encouraged to develop a plan for the reallocation of all or a portion of the former value of Part II fees back into the Canadian broadcasting system.

For example, these monies could be used to support the creation of original and distinctively Canadian programming, the digital transition, or could be directed into the proposed Local Broadcast Initiative Program, for community, local and regional programming partnerships (see Chapter 9).

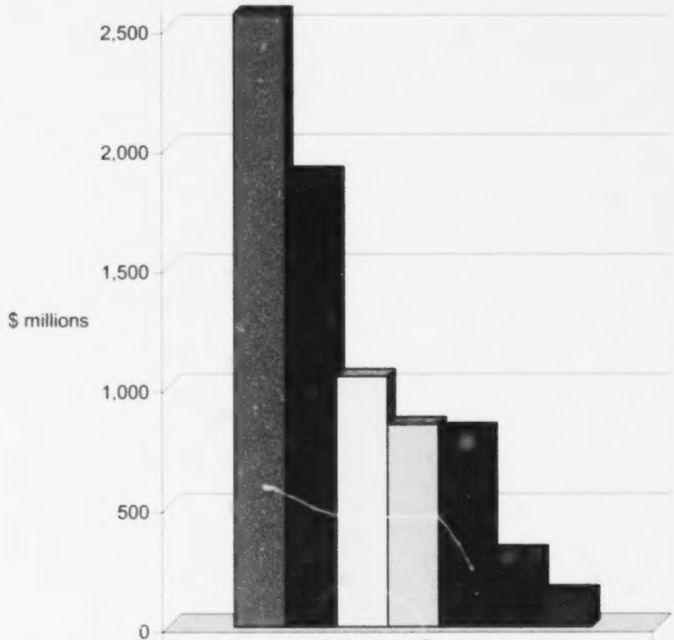
F. Advertising

Throughout its history, private broadcasters have depended on advertising. With the growing importance of cable in the 1970s and 1980s, and satellite and digital services today, subscription revenue is now playing an ever-increasing part in the broadcasting business model. Recent technological advances have placed added pressure on the advertising-based business model. Still, advertising is critical to today's broadcasting system.

Figure 8.32 shows the extent to which advertising is important for television and radio. As can be seen, in 2001, advertising revenue for all Canadian media was worth about $7.6 billion dollars, of which $3.5 billion was generated by television and radio.

As noted earlier on, the two main strands of broadcasting revenue are advertising revenue and subscription revenue. Private radio broadcasters and private conventional television broadcasters rely on advertising revenue. In 2001, ad revenue made up 98 % of total revenue for radio broadcasters and 94% for conventional television broadcasters.[78] Pay and specialty broadcasters also garner advertising revenue. In 2001,

Figure 8.32 Advertising revenue earned by the Canadian media by sector, 2001



	Advertising Revenue
■ Television	2,560
■ Daily newspapers	1,891
□ Radio	1,045
□ Magazines	845
■ Weekly newspapers	820
■ Billboards	310
■ Internet	142

Total revenues: $7.6 billion

advertising revenue was $438 million, which was about 29% of their total revenue. The bulk of revenue for pay and specialty broadcasters comes from subscription revenue, which is passed on from the cable and DTH companies. BDUs receive almost all of their revenue from subscription fees.[99]

Broadcasters face many competitors for advertising revenue. Changes in the number or type of competitors, however, can have an effect on an individual seller of advertising. For example, the growth of pay and specialty services took some revenue away from conventional broadcasters (and from other media).[100] But more television channels does not necessarily mean that television's share of media advertising will automatically grow. Fragmentation leads to smaller audiences for any one channel — the conventional networks can no longer deliver a third of television viewers — and advertisers may prefer advertising in a magazine whose readers share certain characteristics.[101]

An added complication is that satellite technology allows viewers in western regions to see certain American programs before their regularly scheduled timeslot. This has consequences for advertising revenue for Canadian broadcasters. The show Friends, for example, may be scheduled for 9:00 p.m. EST on a Toronto station and 9:00 p.m. CST on a Winnipeg station. Since satellite subscribers in Manitoba may receive programming from the Toronto station as well as the Winnipeg station, they are able to watch *Friends* one hour earlier. Both the Toronto broadcaster and Winnipeg broadcaster will be able to request simultaneous substitution of its ads for those on the U.S. channel showing *Friends* at the same scheduled time. This means that satellite viewers in Manitoba who choose to watch the earlier showing of *Friends* see the ads from the Toronto broadcaster. If there were a large number of Manitobans watching the earlier showing of *Friends* this could increase the value of non-local advertising on the Toronto station, and could decrease the value of local advertising on the Winnipeg station.

Technological change may also affect television advertising in other ways. For example, personal video recorders (PVRs) allow a viewer to bypass commercials, either by not recording them or by skipping ahead while watching a recorded show. Also, some VCRs now have buttons on their remotes that advance the tape in thirty-second intervals. The result, of course, is that broadcast ads, which may not get watched, lose their value. On the other hand, technology could make television advertising more attractive by allowing interactive TV (iTV) or targeted ads based on the profile of programs watched.

Several groups that appeared before the Committee raised issues to do with advertising in the Canadian broadcasting system. The Association of Canadian Advertisers, for example, emphasized the importance of advertising revenues to the Canadian broadcasting system:

> Advertising is also the primary resource sustaining the Canadian broadcasting system. Net advertising media spend was estimated to represent $10.3 billion in revenue flow to Canadian media companies last year. Of this amount, approximately $2.5 billion is invested annually in television advertising and about $1 billion in radio advertising. … over half of all the revenues to support broadcasting coming from advertising, and it makes advertising the single largest contributor of funds to the Canadian broadcasting system.[102]

The Association also called for more opportunities for Canadian advertisers in the Canadian broadcasting system:

> Advertising makes a significant economic contribution to our country. Advertising pays for the content, the shows that entertain and inform Canadians. As such, it is important that it remain an effective marketing tool for advertisers — competitive, uncluttered, and efficient. Accordingly, we support universal access to broadcasting and choice. We advocate that any and all newly licensed services should be advertising supported. Finally, we propose that an advertising-supported CBC Radio could greatly benefit that service, as well as the Canadian taxpayer.[103]

The Alliance for Canadian Advertising Tax Credits (ACATC), in addition to being concerned about maintaining the role of advertising in the Canadian broadcasting system, raised the point that Canadians are producing fewer commercials for Canadian television:

> While statistics are hard to come by, the industry estimates that when we entered the 1990s we produced here more than 80% of the commercials broadcast by Canadian television stations. By the end of the decade that had fallen to 50%. But there's more to that figure than just an overall decline. Since commercials for governments — still the largest advertisers in the country — banks, beer, and others are country-specific products and services, those commercials are all produced here. When you isolate consumer products and services, automobiles and so on, you see that virtually all these commercials are imported, a substantial change from a decade ago.[104]

To address this perceived problem, interested parties have formed an ad hoc coalition: the Alliance for Canadian Advertising Tax Credits. This group noted the economic and cultural importance of Canadian advertising. It also pointed out that Australia has addressed a similar problem by obliging broadcasters to show a certain percentage of Australian-produced commercials. That said, ACATC preferred a tax credit approach:

> … with a small amendment to the existing tax credit system you could provide an incentive for those who produce television commercials in Canada equivalent to the credit available for producers of television programs and movies. While there would need to be appropriate regulations for productions that are much smaller than a movie or a television show, we think it might work.[105]

In a presentation before the Committee, Mr. Alain Gourd, Executive Vice-President with Bell Globemedia, also commented on the changing role of advertising in broadcasting. He said:

> The first change had to do with the source of revenue of the Canadian [t]elevision [s]ystem. This revenue model, which was based on advertising at the time, has now been changed into a model based on subscriptions. At the moment, more than half of the overall revenue of the Canadian broadcasting system comes from subscriptions, and advertising now accounts for only one third of the overall revenue. This situation is exacerbated further by fragmentation, that is more Canadian channels are fighting over a single source of consolidated advertising.
>
> If the trend continues, if we do not allow conventional, general television to have access to subscription revenue, we will be jeopardizing the future of the entire economic model for general television in French and in English, which is one of the main expressions of our culture.[106]

Finally, Mr. Dean Butler, Director, Media Services and President, Vancouver Media Directors Council, raised the point that fragmentation and the availability of national networks on cable and over satellite has changed the traditional local market for broadcast advertising. He claimed that it is increasingly the case that broadcasters sell advertising for a national market, and that this advertising is being priced too high for local merchants. As a result:

> … it's becoming very difficult to operate on a regional basis in the face of that kind of competition. It definitely favours national perspectives, national interests and it goes against supporting any sort of regional economy. I don't believe the regional TV stations can operate in that environment and eventually I believe the local

> television stations like CKBG, Prince George, which is a CBC affiliate, will find itself being a repeater only because they will not be able to sell advertising on a local basis. So from an economic perspective, the local markets have really lost the advantage of having a television station in their own market.[107]

Mr. Butler also provided a personal example of how the advertising costs in his region of British Columbia have increased in the past decade:

> I … bought television advertising in Vancouver 10 years ago at a cost of $100 a point, 200 points, it's $20,000 a week. Today to buy that same TV, it's going to be $500 a point … It's increased 10 times, so that would be $200,000 for that same air time. It's gone up 10 times in 10 years.[108]

Finally, Mr. Butler noted the significance to Canadian merchants — those who would want to purchase advertising time from broadcasters — of concentrated ownership, with possible foreign control, in the advertising industry:

> In our own industry we are facing huge consolidation of ownership among advertising agencies. Now there might be four or five major agencies in Canada that are essentially controlled out of New York. I have been told point blank that I cannot fight New York. Our industry is being decimated by concentration of ownership, not only within the media, across media, but within advertising itself. Anything we can do to create greater competition is a better thing for our country and especially for our region in British Columbia which, from an advertising perspective, we're in danger of losing control of.[109]

In short, broadcasters and advertisers highlighted the competitive pressures they face in today's highly fragmented market. Indeed, in its 1999 television policy the CRTC stated that:

> The Canadian broadcasting system has become increasingly competitive. In such an environment, licensees need flexibility and diversity to attract the largest possible audiences and advertising revenues. The Commission believes that, in a competitive environment, licensees require high quality programming to win audience loyalty.[110]

With this in mind, the next section makes some proposals, which the Committee believes would help industry stakeholders deal with these competitive pressure.

Proposed Solutions

Tax Credits and Incentives

The Committee fully appreciates the importance of advertising in the Canadian broadcasting system and recognizes that it has played a key role in the sector's health and vitality since the earliest days of broadcasting. It agrees with witnesses that changes in the advertising market are placing new pressures on the production and purchase of advertising spots. Furthermore, it is intrigued by the proposal of the Alliance for Canadian Advertising Tax Credits to adjust the existing tax-credit system in such a way that incentives would be created for the production of Canadian advertising spots. In addition, it welcomes the notion of obliging broadcasters to show a certain percentage of Canadian-made advertisements. With this in mind:

RECOMMENDATION 8.6:

The Committee recommends that the Government of Canada study the existing tax-credit system for advertisers with a view to making changes that would encourage the increased production of local, regional and national Canadian-made broadcast advertisements.

Furthermore:

RECOMMENDATION 8.7:

The Committee recommends that the CRTC study the feasibility of imposing a requirement that Canadian broadcasters show a certain percentage of Canadian-made advertisements.

Pharmaceutical Advertising

Industry witnesses raised questions about the prohibition on pharmaceutical advertising. For example, the CAB argued for changes to legislation that would increase the base of potential advertisers in broadcasting. It explained that the 50-year-old restrictions on pharmaceutical advertising in the Food and Drugs Act keep millions out of the Canadian broadcasting system.[111] The CAB also claimed that these lost revenues could flow to Canadian production.

As noted above, **the Committee recognizes the importance of a financially stable private broadcasting sector. It also fully appreciates that pharmaceutical advertising likely represents hundreds of millions of dollars in new revenue for Canadian broadcasters. The Committee notes, however, that this matter falls outside its mandate.**

Endnotes

[1] Manon Lamontagne, "Canadian Programming In French," www.museum.tv.
[2] See Chapter 5 for more details about Telefilm and the funding of independent productions.
[3] Canadian Television Fund, *Activity Report* 2001-2002, p.4.
[4] Meeting of the Standing Committee on Canadian Heritage, 16 April 2002.
[5] Ibid.
[6] Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.
[7] Ibid.
[8] Ibid.
[9] Ibid.
[10] Ibid.
[11] Ibid.
[12] See Chapter 11.
[13] Alexander Crawley, Executive Director, Canadian Independent Film Caucus, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.
[14] Ibid.
[15] See, for example, Decision CRTC 2002-457. This particular decision set out a 25% limit on affiliated production for CTV.
[16] Ibid.
[17] Ibid.
[18] Ibid.
[19] Ibid.
[20] Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.
[21] Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.
[22] Ibid.
[23] Meeting of the Standing Committee on Canadian Heritage, 16 April 2002.
[24] T.J. Allard, Straight up: Private Broadcasting in Canada 1918-1958 (Ottawa: Canadian Communications Foundation, 1979), p. 60.
[25] Ibid, p. 44.
[26] Ibid, p. 140.
[27] Public Notice CRTC 1998-41.
[28] Public Notice CRTC 1998-41.
[29] www.crtc.gc.ca.
[30] Ibid.

[31] Canadian Radio-television and Telecommunications Commission, *Broadcasting Policy Monitoring Report 2002*, p. 29.

[32] Public Notice CRTC 1995-196.

[33] www.cab-acr.ca

[34] Ibid.

[35] Public Notice CRTC 1996-114." www.cab-acr.ca

[37] Meeting of the Standing Committee on Canadian Heritage, 8 November 2001.

[38] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] Ibid.

[43] Ibid.

[44] Ibid.

[45] Ibid.

[46] Ibid.

[47] Ibid.

[48] For the purposes of this table, it is important to distinguish between "services" and "networks." For example, the Canadian Broadcasting Corporation has two conventional television networks — one English-language and one French-language. That said, it operates 15 English-language services and 8 French language services. It is also affiliated with 18 English-language and 5 French-language private services.

[49] Source: Communications Management Inc. "Trends in advertising and subscription revenues in the Canadian television system, 2003".

[50] Canadian Association of Broadcasters, "Canadian Television: Telling Our Stories," TV Board Submission, 30 June 1998, p. 67.

[51] Public Notice CRTC 1997-97.

[52] Canadian Film and Television Production Association, *Profile 2003: An Economic Report on the Canadian Film and Television Industry*, February 2003, p. 2.

[53] Canadian Television Fund, *A Year in Canadian Television*, Activity Report 2001-2002, p. 19.

[54] Canadian Film and Television Production Association, *Profile* 2003.

[55] Meeting of the Standing Committee on Canadian Heritage, 8 November 2001.

[56] Meeting of the Standing Committee on Canadian Heritage, 8 March 2002.

[57] Ibid.

[58] Ibid.

[59] Ibid.

[60] Ibid.

[61] Ibid.

[62] Ibid.

[63] Ibid.

[64] Ibid.

[65] Ibid.

[66] In broadcasting, there are several different, and confusing, uses of the word "licence." Except recently for small cable companies (the former Class 3 companies), a licence from the CRTC was needed to operate in the Canadian broadcasting system. Those in the system paid licence fees to the CRTC. In addition, broadcasters pay licence fees to the producers of the programs they use; these licence fees are analogous to a lease payment for a car: the broadcaster pays for the right to show a program for a certain number of times during a certain period in a certain market. This section deals with the licence fees paid to the CRTC.

[67] The three columns of data on the left side of the table are presented on a cash basis. The two columns on the right side of the table represent amounts that were invoiced (Part I) and assessed (Part II) by the CRTC during each of the respective fiscal years. These amounts do not include any provision for bad debts, write-offs, account adjustments, collection of debts pertaining to previous fiscal years or interest charged on overdue accounts. Accordingly amounts indicated may vary from those totals reported in the official government reporting documents of the Public Accounts and/or Part III Estimates (CRTC: Performance Report).

[68] Glenn O'Farrell, President and Chief Executive Officer, Canadian Association of Broadcasters, Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[69] Ibid.

[70] Canadian Cable Television Association, "Current Canadian Cable Statistics", www.ccta.ca

[71] Canadian Radio-Television and Telecommunications Commission, "What you should know about home satellite broadcasting services," www.crtc.gc.ca.

[72] These distributors provide their services through microwave frequencies.

[73] Canadian Radio-Television and Telecommunications Commission. "TV Distribution and the evolution to digital transmission," www.crtc.gc.ca.

[74] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[75] Ibid.

[76] Ibid.

[77] Ibid.

[78] Ibid.

[79] Time shifting becomes possible when a distributor provides two or more feeds of a given broadcaster's signal from different time zones. The advantage of this practice is that it allows audiences greater flexibility to chose when they want to watch a given show. The drawback is that it draws audiences away from local stations and, by extension, hurts local ad revenues. Furthermore, since only satellite companies are allowed to offer multiple feeds of local stations, it places cable companies at a competitive disadvantage.

[80] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[81] Yves Mayrand, Vice-President, Legal Affairs and Secretariat, COGECO Inc., Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[82] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[83] Ibid.

[84] Ibid.

[85] Ibid.

[86] Ibid.

[87] Ibid.

[88] Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[89] Ibid.

[90] Ibid.

[91] Ibid.

[92] Ibid.

[93] Ibid.

[94] Ibid.

[95] Ibid.

[96] For example, the commercial benefits include barriers to entry.

[97] See figure 8.23.

[98] Public broadcasters also have ad revenue, but only on the television side; CBC in fiscal year 2000-01 received about $350 million in ad revenue, which was about 29% of its current operating funds. The bulk of funding for public broadcasters, of course, comes from government.

[99] It is important to realize, however, that the categories for the sectors are not watertight, a point to be taken up below in the section on media ownership. To take just one example, BCE owns a satellite service, Bell ExpressVu, a conventional broadcaster, CTV, and several specialty channels. Furthermore, looking at year-to-year changes in a revenue stream for one sector in broadcasting or comparing revenue changes among the various sectors can be misleading. Advertising revenue tends to be more cyclical than subscriber revenue, so observed changes may say more about the economy's position in the business cycle than economic viability of a broadcasting sector.

[100] Subscription revenue, while perhaps more stable over the business cycle than advertising revenue, is not without uncertainty. Some subscription revenue received by BDUs is passed to the pay and specialty broadcasters carried by the distributors. But as channels increase in number, the average payment from the distributor to the channel may fall. The subscription revenue received by individual BDUs is also subject to competitive pressures. Cable once enjoyed a monopoly in most markets, but satellite distribution is now a threat, especially in the smaller markets.

[101] A good example of media shift by an advertiser occurred at the end of September 2002 when Sears Canada, one of the country's largest advertisers announced that it was cutting back on print ads and increasing spending on broadcast advertising. See Marina Strauss, "Sears Changing Its Marketing," *Globe & Mail*, 27 September 2002, p.B2.

[102] David Harrison, President, Harrison, Young, Pesonen and Newell, Institute of Communications and Advertising, Association of Canadian Advertisers, Meeting of the Standing Committee on Canadian Heritage, 18 April 2002.

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[103] Ronald Lund, President and CEO, Association of Canadian Advertisers, Meeting of the Standing Committee on Canadian Heritage, 18 April 2002.

[104] Rupert Brendon, President, Institute of Communications and Advertising, Alliance for Canadian Advertising Tax Credits, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[105] Thor Bishopric, Alliance for Canadian Advertising Tax Credits, Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[106] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[107] Meeting of the Standing Committee on Canadian Heritage, 10 December 2002.

[108] Ibid.

[109] Ibid.

[110] Public Notice CRTC 1999-97.

[111] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

THE STATE OF THE SYSTEM

Chapter 9

Community, Local and Regional Broadcasting

In the early days of radio, programming was not specifically designed for community, local, regional or national audiences because technological limitations prevented most broadcasters — apart from the radio network operated by the Canadian National Railways — from reaching beyond a particular geographic contour. Furthermore, beginning in the 1930s, regulations made national programming the exclusive domain of Canada's public broadcaster, the CRBC, and later on, the CBC.

Regulations for Canadian television, however, did not and could not follow this precedent. Due to the great costs involved in producing audio-visual material, most television stations from their earliest days needed to affiliate with networks or purchase programming from other sources. As a result, unlike radio, several private television networks have developed over time, including CTV, TVA, Global and TQS.

By the 1970s, cable distribution was widely available to Canadians. Cable companies rebroadcast over-the-air signals, often greatly improving the quality of reception in the process. But cable also allowed the distribution of distant signals to Canadians from other cities, provinces, regions and other countries, most notably the United States. This allowed Canadians from Victoria to St. John's to easily and affordably watch the best of Canadian and American programming.

Although transmission by cable did not depend on the public airwaves, the CRTC recognized that broadcasting distribution undertakings could contribute to the public interest needs of Canadians. For this reason, in 1975, the Commission imposed conditions on cable operators, which included the expectation that they:

- deliver local community programming;
- allow for citizen participation;
- provide opportunities to as many individuals and groups as possible to present ideas;

- provide facilities and staff for the training of individuals and groups in the community;
- set up advisory groups from the community to advise;
- allow citizens to assist in the operation of the community channel without diminishing the licensee's ultimate responsibility for the programming being distributed; and,
- give the maximum opportunity for the community to see live programming.

Through the course of its hearings and travels, the Committee heard that technological innovations combined with audience fragmentation have disrupted the traditional broadcasting model for community, local and regional broadcasting. It learned that Canadians are abandoning traditional broadcasting sources for a multitude of new services. It heard that citizens feel that they have less access than ever before to community broadcasting services. And it was told that the provision of high quality local and regional television content is becoming less economically viable and therefore in danger of disappearing altogether.

This chapter looks at the current state and future prospects for community, local and regional broadcasting in Canada. For the purposes of this discussion, issues have been divided based on CRTC definitions and witness uses of these terms. *Community* refers to the delivery of community radio and television services when labelled as such by the CRTC; *local* addresses issues raised by witnesses concerning the delivery of local news and non-news programming; and, *regional* deals with specific programming concerns faced by regional programmers and provincial educational broadcasters.

A. Community

The *Broadcasting Act* makes two references to community broadcasting. Section 3(1)(*b*) states that: "the Canadian broadcasting system, operating primarily in the English and French languages and [is comprised of] public, private and community elements." Section 3(1)(*l*)(iii) notes that "the programming provided by the Canadian broadcasting system should … include educational and community programs."

The Committee notes that it is extraordinarily difficult to talk coherently and systematically about community television and radio service provision. This is because the CRTC has, over time, developed a complex and convoluted array of policies and expectations for such broadcasters. These include policies for community cable channels, ethnic television, low-power television, community radio, ethnic radio, low-power radio, campus radio and radio and television services for francophone minorities outside Quebec. Therefore, for the sake of clarity, this section restricts its profile of services to community television and radio.[1]

Community Television

In 1975, the CRTC identified the following expectations for community cable channels:

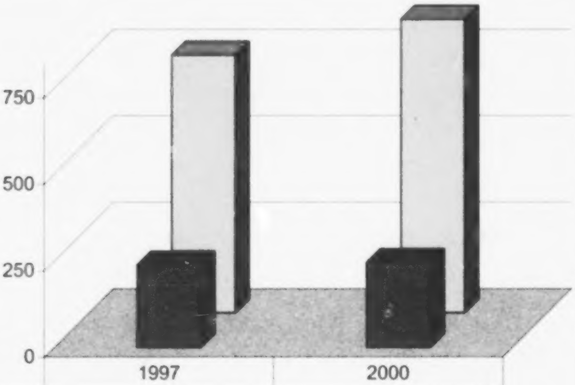
> ... identify communities ... such as neighbourhoods, wards, boroughs and, where appropriate, municipalities, and give opportunities to individuals and groups in these communities to express their ideas and aspirations; cover the activities of municipal councils and school boards; search out and give opportunity for expression to individuals and groups with "communities of interest"; reflect where appropriate the bilingual nature of the communities they serve.[2]

These principles — which place a strong emphasis on the importance of citizen participation — are essentially the same ones that shape CRTC policy in this area today.

In 1986, the Report of the Task Force on Broadcasting argued that community broadcasting "must be seen as an essential third sector of broadcasting if we are to realize the objective of reasonable access to the system."[3] Five years later, in 1991, the revised *Broadcasting Act* made "community" one of the three elements of the system, rather than an adjunct to public and private services. In 1997, however, the CRTC decided that cable companies should no longer be required to provide a community channel since it was the Commission's belief that opportunities for local expression would continue without regulatory requirements.[4]

The CRTC's decision to grant regulatory flexibility to cable companies quite naturally caused many to predict that there would be a decline in the number of community channels. The available evidence, however, does not support this concern. On the contrary, as figure 9.1 shows, the number of community channels increased between 1997 and 2000.

Figure 9.1 Total number of cable systems making contributions to community television, 1997 / 2000



	1997	2000
■ Cable companies	238	245
☐ Community channels	746	851

Furthermore, during this same period, the total number of cable systems making contributions to community channels increased slightly from 238 in 1997 to 245 in 2000. The problem with these numbers, of course, is that they do not tell anything about the quality or types of service offered; nor can they tell us whether these channels are meeting the objectives of the CRTC's community programming policy.

The CRTC's 2002 Community Media Policy

On 10 October 2002, the CRTC released a new policy framework for community-based media.[5] According to the Commission, this new policy should:

> … ensure the creation and exhibition of more locally-produced, locally-reflective community programming … [and] a greater diversity of voices and alternative choices by facilitating new entrants at the local level.[6]

Key Elements of the CRTC's 2002 Community Television Policy

Community Television should:

- engender a high level of citizen participation and community involvement in community programming;
- actively promote citizen access to the community channel and provide and promote the availability of training programs;
- provide feedback mechanisms, such as advisory boards, to encourage viewer response to the range and types of programs aired;
- seek out innovative ideas and alternative views;
- provide a reasonable, balanced opportunity for the expression of differing views on matters of public concern;
- reflect the official languages, ethnic and Aboriginal composition of the community;
- provide coverage of local events; and,
- publicize the program schedule.

This new policy also reaffirms the role of the community channel as "a public service … facilitating self-expression through free and open access by members of the community."[7] It argues that community channels should complement programming provided by conventional broadcasters and that "the public service orientation of the community channel can best be achieved through stable funding provided by cable licensees, with limited reliance on advertising revenues."[8]

New Policy Elements for Community Television

- Community channels are now required to provide a minimum of 60 percent locally produced programming per broadcast week;
- Cable licensees are now expected to promote citizen access and provide and promote the availability of training programs;

- Cable community channels are now required to provide a minimum of 30 percent and up to 50 percent of access programming (local programming created and produced by community members) per broadcast week;
- Specific measures have been introduced to ensure equitable access for not-for-profit television corporations whose formal purpose is to produce local community television programs;
- A limited use of full-motion video in sponsorship messages is now allowed;
- Not-for-profit community groups may apply to the CRTC for a licence to operate a *Community programming undertaking* in areas where cable operators choose not to operate a community channel; and,
- Self-promotion by cable companies on the community channel is now limited to two minutes per hour.

To further enhance the availability of community and local programming the Commission has also created a new class of community-based television — *Community-based television programming undertakings* — with two sub-categories: *Community-based low-power television undertakings* and *Community-based digital services*.

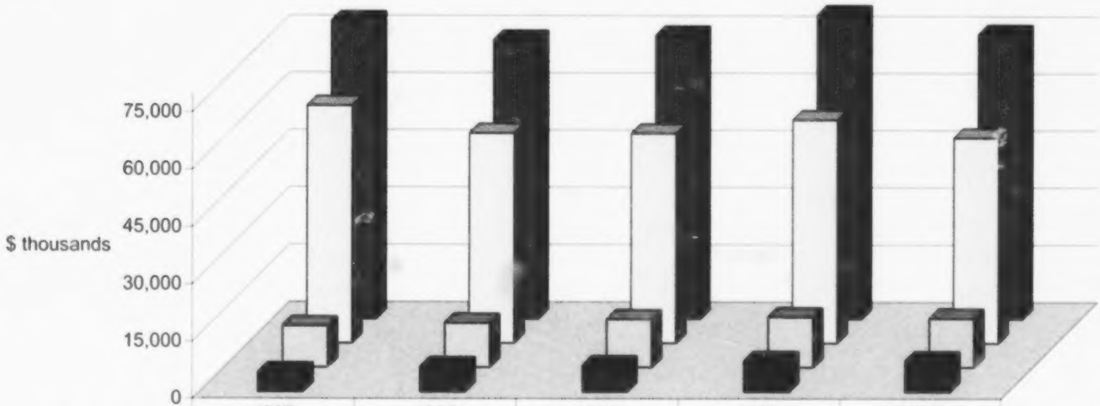
These new community television services (which are open to for-profit and not-for-profit applicants) will be expected to provide high levels of Canadian and locally-produced programming and will be required to devote over the broadcast year a minimum of 80% Canadian content and 60% local programming. They will also be permitted to broadcast up to 12 minutes of local advertising per hour. These programming services will not be granted priority distribution on analog cable channels, but cable systems offering digital services will be required to distribute them on the digital band.

Revenues

The CRTC requires all broadcasting distribution undertakings to contribute 5% of their gross annual revenues to an eligible programming fund, such as the Canadian Television Fund (CTF). Those cable companies that operate a community television station, however, are allowed to keep between 2% and 3% of this 5%.

Figure 9.2 shows community channel expenditures for the period 1997 through 2001. Whether these expenditures translate into opportunities for citizen access (e.g., employment and volunteer positions) is unknown. This is because the CRTC does not monitor — nor do the cable companies report on — how these monies are spent. As can be seen, cable company expenditures on community channels were relatively stable during this five-year period, ranging between about $73 and $80 million dollars.

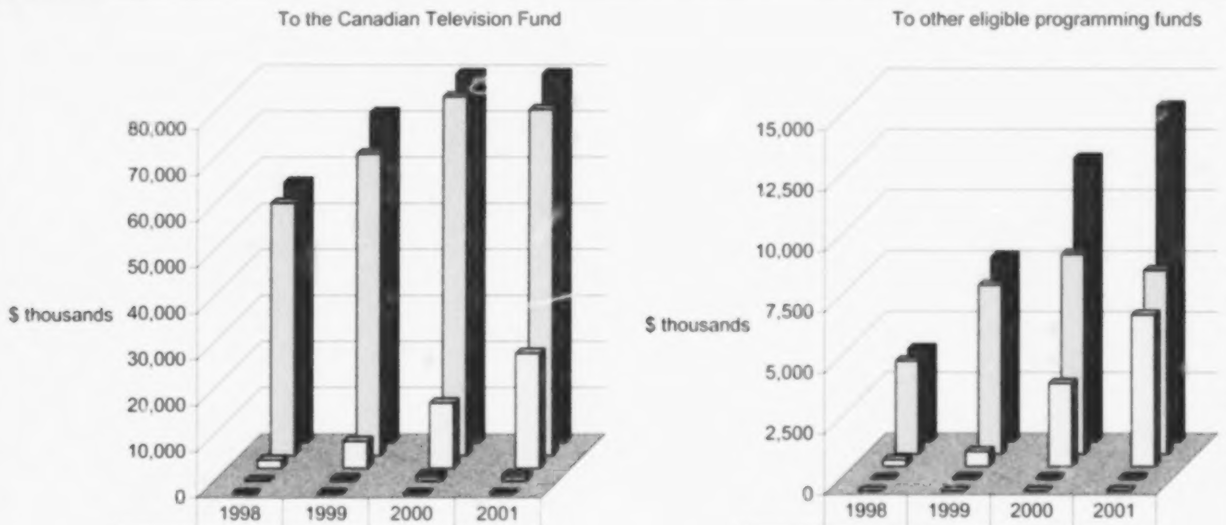
Figure 9.2 Community channel expenditures, 1997-2001



	1997	1998	1999	2000	2001
■ Class 2	5,083	6,522	6,795	8,021	8,004
□ Class 1 < 20k	10,838	11,585	12,579	13,169	12,826
□ Class 1 > 20k	62,166	54,971	54,879	58,540	53,870
■ Total	78,087	73,078	74,253	79,730	74,700

That said, large cable company contributions (i.e., Class 1) seem to have declined by more than $8 million since 1997. This drop may mean that these BDU's have been exercising their option to contribute to an eligible programming fund. As figure 9.3 shows, cable company contributions to programming funds increased by more than $20 million between 1998 and 2001, from nearly $55 million to just over $75 million.

Figure 9.3 Contributions made by broadcasting distribution undertakings to Canadian television programming funds, 1998-2001



To the Canadian Television Fund

	1998	1999	2000	2001
■ Other	0	0	3	0
▨ MDS	0	375	1,172	1,351
☐ DTH	1,711	5,784	14,127	24,926
☐ Cable	54,769	65,481	77,829	75,024
■ Total	56,480	71,640	86,182	102,026

To other eligible programming funds

	1998	1999	2000	2001
☐ Other	0	0	1	3
▨ MDS	0	38	36	28
☐ DTH	250	598	3,410	6,231
☐ Cable	3,821	6,949	8,227	7,557
■ Total	3,821	7,585	11,674	13,819

The exact reason for this impressive increase in contributions to Canadian programming funds is unclear. On the one hand, it may mean that cable companies are less willing than they once were to invest money into community television; on the other hand, it may reflect a growing commitment to the creation of Canadian programming. At the very least, these data, coupled with the relative steady state of investment into community television, highlight a pressing need to unravel the existing linkage between funding support for community television and the funds that support Canadian programming. The potential separation of these two funding mechanisms is addressed by a recommendation in Chapter 5.

What the Committee Heard

The main issues raised by witnesses when talking about community television had to do with: the importance of community television; the role of volunteers; the role of cable companies; changes in programming priorities; and, the recent creation of community cable networks.

Mr. Richard Ward of The Community Media Education Society, for example, told the Committee:

> Community television encourages people to seek out events affecting their neighbourhoods. Action extends beyond the technicians and producers. Community organizers are surprised and delighted to be noticed. When their neighbours see the event, interest snowballs. That is how mass media are supposed to work. Make no mistake, by historical standards or Internet standards, community TV is a mass medium.[9]

Seen through the lens of a small market cable company, Mr. Marc Simard, Chairman of the Board of Télé Inter-Rives ltée. shared the following story with the Committee:

> … on a January Sunday afternoon, I was driving around with my wife and I decided to take a trip to the back country. As we arrived in a small town we saw a gathering of cars. I said to my wife that this was probably an accident and we went to see what was going on. As we got closer, we realized that this was not the case. Many people had gathered in the neighbouring field; some kind of activity was going on. Suddenly, I saw a banner in the distance with the letters identifying both our stations.
>
> … When they introduced the event's organizer, they told me that I could not imagine how thankful they were. They thought that they would expect 300 to 400 persons at their event, but now they had a problem: they were running out of lemonade, hot-dogs and fries because a crowd of 2,000 people had turned up.
>
> I was told that on the previous night, during the Montréal Canadians hockey game, our Radio-Canada station had broadcast their message free-of-charge, as well as before the TVA network news, during peak listening time. They had never expected such a large turn out and they were very happy. So the people shook hands with us, practically embraced us in their arms to thank us.[10]

With respect to volunteer involvement in community programming, the Committee saw first-hand the important contributions that volunteers make to community programming. In St. John's Newfoundland, for example, the Committee met the gifted and enthusiastic volunteers and staff at Rogers Cable who produce a popular local community program, *Out of the Fog*. The following viewer feedback captures well the enthusiasm that the Committee witnessed for community television during its stay in St. John's:

> I'm a very strong fan of your show. I watch it every day without fail and would recommend it to all of my friends and family! It's great that us Newfoundlanders finally have our own television talk show featuring Newfoundland guests. I love being able to kick back after a hard days work, and be entertained by Newfoundlanders, for Newfoundlanders![11]

> We almost never miss an episode and really enjoy the featured local talent as well as the current issues you cover daily ... I think it is great that you can provide local high school students with valuable on-the-job experience in television production and we consider your program a valuable asset for St. John's residents to keep abreast on all the local issues.[12]

> It gives me a great lift to know what is going on around our city and province. It also makes me feel good after listening to the other Canadian and U.S. channels. There is so much negativity and loudness on these channels. Your channel gives a lot of entertainment and peacefulness and gives great information about our own province. I hope this continues because it is exactly what people need a lift and your program does that.[13]

In other regions, however, the Committee heard discouraging stories of volunteers being laid off or relieved of certain responsibilities. Mr. John Grogan, for example, told the Committee that:

> ... it used to be that people could come in, walk in off the street and say "I want to be a volunteer". They could volunteer to run a camera, for script writing, producing, editing. Now, basically, all they're allowed to do is very basic things. That discourages people from participating the next time. They say that wasn't a stimulating or rewarding experience.[14]

Similarly, Mr. Rogers Davies said:

> ... in Cranbrook ... with a change in program director, a new format was imposed. Volunteers were fired. That thing became autocratic, totally controlled by the company and its employees. I

> think that is totally unacceptable as a format. Volunteers as such cannot access that channel...[15]

This same sense of frustration prompted Mr. Chow Tan from the Vancouver Association of Chinese Canadians to state that:

> ... if the cable companies were doing a good job on the cable community channel, they would be proud to show their records and we all [community volunteers] would have more time and money for programming.[16]

According to one witness, a change in programming priorities is one reason why volunteers are used less than they once were. Mr. Jan Pachul of Star Ray TV noted:

> You can't go in there to get a show done; it's all professional — professionally run, professional people running everything — and there is no access to the community.[17]

Indeed, as Mr. Ken Marshall, vice-president and general manager for Rogers' Atlantic region, explained:

> ... in the community channel world, where we are trying to evolve the programming from the cooking type of show and fly-tying shows to these Focus NB shows — as we saw last week, *Out of the Fog* in Newfoundland, and *Melanson Live* — we're trying to really be a focus on the community [with higher quality productions].[18]

The decline in volunteer opportunities due to new programming strategies was sometimes raised in parallel with concerns over the growing consolidation of community stations into small networks. For example, *Canal Vox*, run by Videotron in Quebec, combines local programming with centralized programming from Montréal. But, according to La Fédération des télévisions communautaires autonomes du Québec, this strategy has reduced community participation and programming diversity, particularly in outlying areas.

Cogeco Cable, however, argued that these new arrangements are better suited to attract larger audiences and, as such, are contributing to community needs and goals. As Ms. Hélène Dubuc explained:

> Programming which is essentially local does not exclude the possibility of exporting certain programs to other regions, where an

> interest has been noted. Today's technologies offer these opportunities and we believe that it is wise to use them judiciously, to everyone's benefit.[19]

But several witnesses pointed to a side effect of the cable companies' audience-maximization strategy. The independent community channel, La Corporation de Télédiffusion du Grand Châteauguay (CTGC), for example, was unilaterally removed by Videotron from its programming grid in November 1999.[20] Moreover, according to the CTGC:

> About a dozen or so corporations have been withdrawn from the airwaves by the cable companies in Quebec. Others are in the process of losing their position in British Columbia. Many communities no longer have access to air time. The 1998 deregulation ha[s] overturned the fragile equilibrium that hung on obligations and conditions of licence.[21]

In light of these circumstances, the CTGC proposed to the Committee that community channels be made entirely independent from Canada's cable companies. Similarly, Ms. Lynda G. Leonard told the Committee that: "it would be in the best interests of all Canadians to have community channels run by non-profit groups operated at arms-length from the cable companies."[22]

Others witnesses, however, proposed that the symbiotic relationship between cable companies and community channel be modified, rather than simply abandoned. Mr. Peter Sandmark of the Independent Film and Video Alliance, for example, proposed that:

> ... the community channels should be independently run, and financial support for them should be found by transferring the percentage the CRTC requires cable companies to invest in community TV into a direct financial subsidy to community channels, which would be publicly run by non-profit community organizations.[23]

In some communities, cable companies operate two distinct community channels, one in French and another in English. But these companies are only eligible to deduct the 5% Canadian production requirement that it would if it ran a single unilingual service. Rogers Cable therefore proposed:

> ... that 2% of the 5% gross broadcasting revenues be provided towards a production fund to assist cable companies operating a second community channel serving the needs of a minority official language in the same market. ...
>
> Rogers strongly believes the redirected funding, which would amount to $998,000 a year, is essential to maintaining and further enhancing the local programming available to bilingual markets.[24]

For their part, the CCTA suggested that small cable systems be allowed to "repatriate" the entire 5% of gross revenues devoted to Canadian production. Similarly, Access Communications proposed that all cooperatives be allowed to "repatriate" the full 5% devoted to the Cable Fund for their community channels.

Community Radio

The CRTC's policy on community radio is designed to foster the availability of local programming that differs in style and substance from that provided by commercial stations and the CBC. Programming is expected to be relevant to the communities served, including official language minorities. Such programming is also expected to add diversity to the broadcasting system by increasing programming choice in both music and spoken word.[25]

The CRTC describes the role and mandate for community radio as follows:

> The primary focus of a community radio station is to provide community access to the airwaves and to offer diverse programming that reflects the needs and interests of the community that the station is licensed to serve, including: music by new and local talent; music not generally broadcast by commercial stations; spoken word programming; and local information.[26]

The Commission distinguishes between two types of community radio stations — Type A and Type B. These two station types are defined by the Commission as follows:

> A community radio station is a Type A station if, at the time of licensing, no other radio station, other than one owned by the CBC, is operating in the same language in all or part of its market. ...

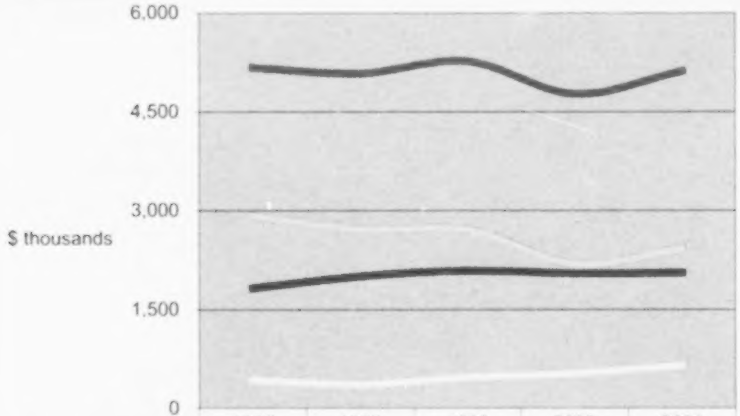
> A community radio station is a Type B station if, when the licence is issued, at least one other station, other than a station owned by the CBC, is licensed to operate in the same language in all or any part of the same market.[27]

According to the CRTC, there were 36 Type A and 32 Type B community stations in 2002. In 2000, all limits on advertising on community radio were lifted since it was the Commission's belief that "placing limits on advertising is not the most effective way to guarantee that community stations offer programming that differs in style and substance from that provided by other types of stations."[28] Apart from advertising sales, revenues for these stations may also be supplemented by fund-raising, grants and other sources.

Revenues

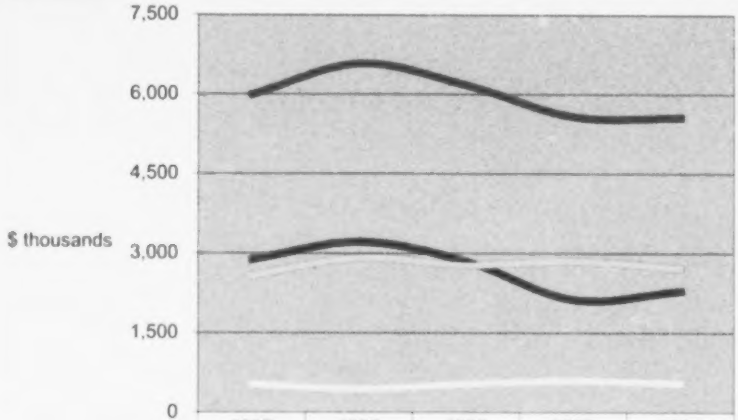
Not all community radio stations file returns with the CRTC. Figures 9.4 and 9.5 show advertising revenues for community stations that submitted returns for the period 1996 through 2000. These figures demonstrate the importance of advertising for community radio undertakings. Indeed, Type A and Type B community radio stations generate about half of their revenues from advertising.

Figure 9.4 Revenues for Type A community radio stations, 1997-2001



	1997	1998	1998	2000	2001
▬ Local ads	1,826	2,009	2,090	2,053	2,059
National ads	427	365	472	529	645
Other revenue	2,915	2,710	2,705	2,188	2,412
▬ Total revenue	5,168	5084	5,267	4,770	5,116

Figure 9.5 Revenues for Type B community radio stations, 1997-2001



	1997	1998	1998	2000	2001
▬ Local ads	2,887	3,220	2,852	2,132	2,298
National ads	532	449	538	596	552
Other revenue	2,572	2,911	2,781	2,851	2,715
▬ Total revenue	5,991	6,580	6,171	5,579	5,565

What the Committee Heard

The Committee heard very few general comments about community radio. French-language minority communities, however, had much to say about problems with service provision outside Quebec.

The Impératif français, for example, was worried by the way communities are designated as francophone or anglophone:

> … an anglophone market is any market where citizens whose mother tongue is French represent less than 50% of the population (section 18(4)*b*). This means that if the population in a given area is 49% francophone and 22% anglophone, the remaining 29% who are neither will be counted with the anglophones to tilt the balance in their favour. What is depicted here resembles the demographic and linguistic make-up of the Island of Montréal in the near future.[29]

Another concern was the CRTC's refusal on two occasions to grant the Coopérative radiophonique de Toronto a radio licence. As Mr. Christian Martel explained, a Toronto francophone "is far better informed about what is going on in Québec or the Outaouais region than about what is going on in his or her own community".[30] Indeed, many witnesses could not understand why Toronto, Canada's largest city, has just one local French-language broadcaster (the CBC) and a small amount of French language community programming on the University of Toronto's CUIT-FM campus radio station.[11]

Ms. Dyane Adam, Canada's Commissioner of Official Languages, was particularly concerned by the CRTC's actions in this regard. She noted:

> The various examples … clearly indicate that the CRTC must take into account the impact of its decisions on the official language communities. Not only must … radio … be available to the linguistic majorities and minorities, but they must also reflect them and help contribute to Canada's social fabric, one based in particular on linguistic duality. We must think about the means needed to obtain this objective. To this end, the Commission has an obligation to achieve results.[12]

This prompted the Association des radiodiffuseurs communautaires du Canada to wonder how the CRTC interprets its own mandate to balance cultural, social, and economic objectives.

Mr. Gilles Arsenault, of Radio Béausejour told the Commitee that: "for linguistic minority communities, community radio is the only communication tool that belongs to the community."[13] Similarly, the Fédération acadienne de la Nouvelle-Écosse noted that:

> Acadians have little access to this form of mass communication [community radio]"; "other than in [the] Chéticamp and Baie Sainte-Marie areas, there is no [French-language] community television. Furthermore, the latter have very modest means".[14]

In short, when talking about community radio, most witnesses were concerned with access to programming. To deal with these challenges, many witnesses called for an expansion of community radio services. The Alliance des radios communautaires du Canada argued that:

> In major urban centres and isolated regions such as Toronto, Victoria and Whitehorse, where Radio-Canada's local programming scarcely exceeds 40 hours a week, the [Broadcasting] Act should encourage a sharing of broadcast time with the various community associations."[15]

Mr. Digby Peers, a former CBC radio producer, speaking of his involvement in community radio workshops, told the Committee that he "was both amazed and appalled at how much they could get done on how little money and how good their technicians were at putting together old pieces of equipment."[36] Mr. Peers therefore suggested that there be a stronger relationship between the CBC and community radio organizations. The Corporation, he explained, has the equipment and expertise to support community radio by training its volunteers and providing essential resources:

> If the CBC is restructured to do the job properly, I don't think there's a heck of a lot of money involved in having part of their funding and part of their mandate, with specific criteria that's researched, to go out into some of these towns that would have to service a certain group or a certain large population or a little population, and just give them a little coaching from time to time. It doesn't have to be all done at the same time".[37]

Other new models to support community radio in Canada were not proposed. More often, organizations expressed the desire to have current programs maintained or bolstered, especially Department of Canadian Heritage programs to support minority language communities.[38] As one witness explained to the Committee:

> ... at this time, it isn't really the CRTC that is preventing the development of community radio services; rather, it is the absence of a well-defined [Department of Canadian Heritage] program that is adapted to today's new technologies.[39]

With this in mind, Mr. Daniel Levesque of Radio MirAcadie proposed that up to 75% of all start-up costs for minority-language community radio be funded by the Department of Canadian Heritage.

Other francophone community associations asked that FM frequencies be reserved in their areas (by the CRTC and Industry Canada) for minority-language community radio.

As for low power radio, more powerful frequencies was the most common request. The Assemblée communautaire fransaskoise, for example, told the Committee that because the francophone population of Saskatchewan is geographically dispersed, 250 watt transmitters should be licenced in place of the current 5 watt transmitters:

> As the Fransaskois community is, for most part, rural, with farms that are constantly expanding, a five watt transmitter would not be strong enough to reach the francophone community. Five watts is just not realistic. With that type of transmitter, you could only broadcast in a small village and you would not have the desired impact on the community.[40]

Mr. Robert Boulay of the Alliance des radios communautaires du Canada agreed:

> The basic idea is a very good one, except that five watts in Regina or Saskatoon, that is not too viable. We and the Assemblée communautaire fransaskoise have often told the CRTC, whenever we had the chance, that it was very nice of them, but that it was like giving us a one horsepower automobile. So we ask that exceptions be made and that we be allowed up to 250 watts, or even 500 watts especially in urban areas. You have just been to the Prairies and have seen how vast the territory is and how spread out the francophones are. We are not going to set up 10 five-watt transmitters; that would not be acceptable.[41]

B. Local Broadcasting

The *Broadcasting Act* makes three references to local broadcasting. Section (3)(1)(*i*)(ii) states that: "the programming provided by the Canadian broadcasting system should … be drawn from local, regional, national and international sources." Section 3(1)(*t*)(i) states that broadcasting "distribution undertakings … should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations." And, Section 3(1)(*t*)(iv) notes that distribution undertakings:

> … may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy … in particular provide access for underserved linguistic and cultural minority communities.

Television

The CRTC defines local television as follows:

> "Local television station" means, in relation to an undertaking, a licensed television station that (a) has a Grade A official contour that includes any part of the licensed area of the undertaking, or (b) has, where there is no Grade A official contour, a transmitting antenna that is located within 15 km of the licensed area of the undertaking.[42]

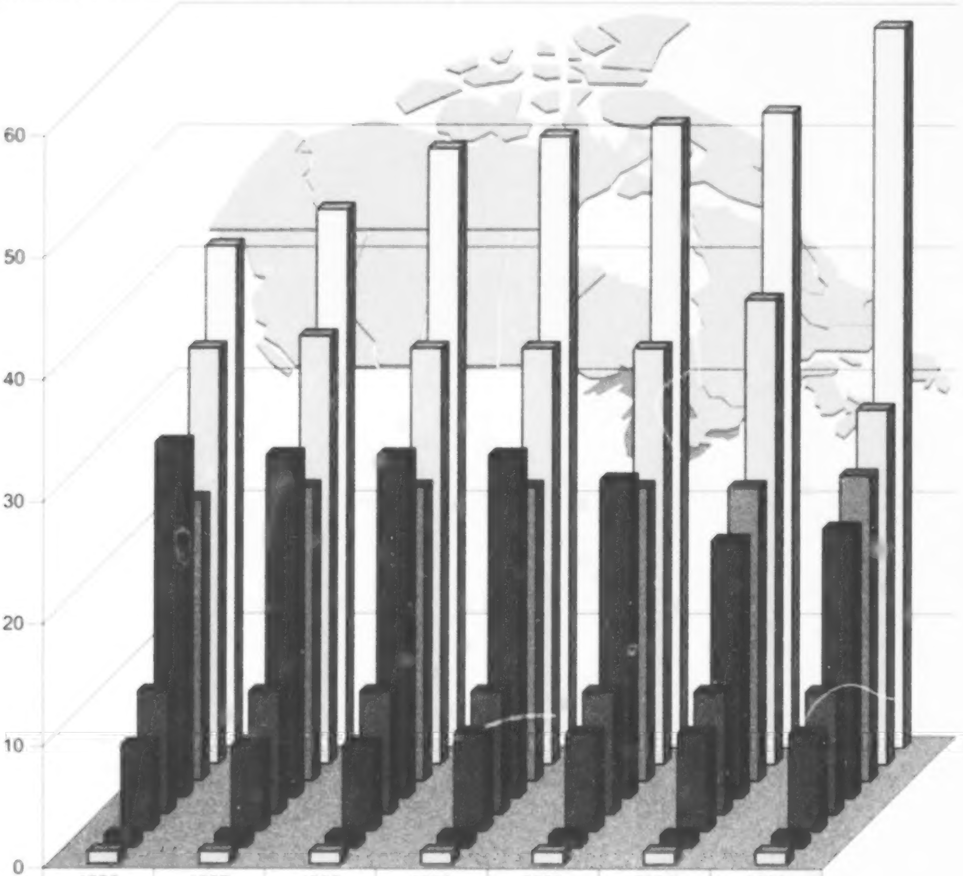
In other words, a local television station is an over-the-air broadcast undertaking that reaches a particular audience via a transmitting antenna (or antennae) within a particular contour[43] (i.e., footprint) as defined in an undertaking's conditions of licence by the CRTC.

A key tenet of the CRTC's 1999 television policy is the delivery of local news and non-news programming by conventional, over-the-air broadcasters. Indeed, all licence renewals now require applicants to "demonstrate … how they will meet the demands and reflect the particular concerns of their local audiences, whether through local news or other local programming."[44]

It is extremely difficult, however, to say much about overall trends in the production of local news or non-news programming in Canada. This is because local and national news programming data tend to be aggregated for reporting purposes. Furthermore, because the CRTC does not impose uniform conditions of licence on each local station, trends quickly become difficult to evaluate, even within a particular market.[45]

That said, it is possible to appraise the potential for the production of local programming based on available studio facilities. Figure 9.6 shows the number of local television stations in Canada with studio facilities for the period 1996 through 2002. Overall, the number of studio facilities operated by independent broadcasters during this period increased from 41 to 59. The most notable drops were with CTV, which reduced its facilities from 38 to 29 between 2001 and 2002, and CBC, which downsized from 52 to 47 owned or affiliated studio facilities between 1996 and 2002.

Figure 9.6 Canadian television stations with studio facilities, 1996-2002



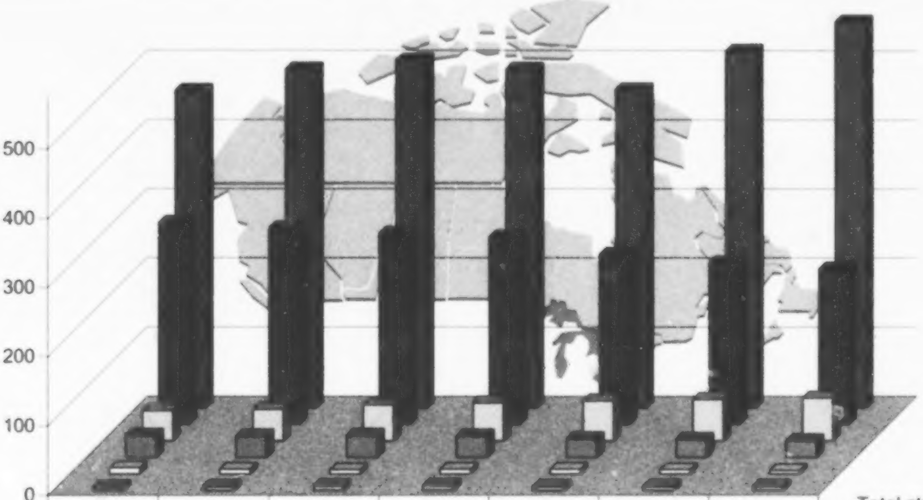
	1996	1997	1998	1999	2000	2001	2002
□ TVO	1	1	1	1	1	1	1
■ Télé-Québec	1	1	1	1	1	1	1
■ Quatre-Saisons	7	7	7	8	8	8	8
■ TVA	10	10	10	10	10	10	10
■ CBC (affiliated)	29	28	28	28	26	21	22
▨ CBC (owned)	23	24	24	24	24	24	25
□ CTV	34	35	34	34	34	38	29
□ Independent	41	44	49	50	51	52	59

Total studios
1996: 146
1997: 150
1998: 154
1999: 156
2000: 155
2001: 155
2002: 155

Radio

There are more than 750 radio stations owned and operated by Canadians that produce and deliver hundreds of hours of Canadian local programming each year. Most of these stations cover local news and events and rely heavily on advertising revenues from local businesses. Figure 9.7 shows the number of local AM and FM radio stations (public, private and not-for-profit) with studio facilities for the period 1996 through 2002. This figure shows an overall growth in the number of radio stations in Canada from 841 to 881 during this period.[46]

Figure 9.7 Canadian radio stations with studio facilities, 1996-2002



	1996	1997	1998	1999	2000	2001	2002
▨ FM: CBC (affiliated)	5	6	7	7	6	6	6
☐ AM: CBC (affiliated)	9	7	6	7	7	6	5
■ AM: CBC (owned)	32	31	32	31	27	26	24
☐ FM: CBC (owned)	44	46	52	55	58	60	62
■ AM: Independent	292	284	276	271	246	234	225
■ FM: Independent	459	490	503	490	460	516	559

Total studios
1996: 841
1997: 864
1998: 876
1999: 861
2000: 804
2001: 848
2002: 881

The CRTC's commercial radio policy expects radio to be relevant to local communities.[47] It defines local radio programming in the following manner:

> Local programming includes programming that originates with the station or is produced separately and exclusively for the station. It

> does not include programming received from another station and rebroadcast either simultaneously or at a later time; nor does it include network or syndicated programming that is five minutes or longer unless it is produced either by the station or in the local community by arrangement with the station.
>
> In their local programming, licensees must include spoken word material of direct and particular relevance to the community served, such as local news, weather and sports, and the promotion of local events and activities.[48]

Concern over cross-media ownership prompted the CRTC to revise its commercial radio policy in 1998. The Commission now limits ownership or control of radio stations in a given market to:

> ... three stations ... with a maximum of two stations in any one frequency band. In markets with eight commercial stations or more operating in a given language, a person may be permitted to own or control as many as 2 AM and 2 FM stations in that language.[49]

The Commission has also addressed general concerns about the consequences of the consolidation of ownership on news programming. In this regard, the Commission has adopted:

> ... a case-by-case approach in assessing programming commitments. Applicants seeking to acquire ownership or control of more than one AM and one FM station in a given language and market will be required to outline how their proposed programming will benefit the community and further the objectives of the Act. The Commission will retain the option of requiring adherence, by condition of licence, to particular commitments made by applicants.[50]

While there are Canadian content requirements that stipulate certain levels of Canadian vocal music in English and French (which range from 35% to 65%), very little can be said about the delivery of local news and non-news programming by Canadian radio stations. This is because local programming is not like other radio program types such as music, which is typically subdivided for licencing purposes into a set of discrete categories (i.e., country music, oldies, middle-of-the road, etc.).

What the Committee Heard

The Committee notes that witnesses rarely raised concerns with the local services provided by Canada's commercial radio broadcasters. On the contrary, the major "local" issue raised by witnesses had to do with local television news and non-news programming and the concentration of media ownership.

The CRTC's 1999 television policy makes the following observation concerning local news programming:

> The Commission has carefully evaluated the availability, profitability and success of local news programs throughout the country. It has also considered the changing broadcasting environment and, in particular, the availability to Canadians of alternative sources of local news and information. In larger Canadian markets, viewers are able to choose among local or regional news provided by the CBC or Radio-Canada, and two to four private stations. In addition, some community cable channels provide regular local newscasts. A regional specialty service, Pulse 24, provides news and information primarily in southern Ontario. Various information services are also increasingly available on the Internet for those who need specific types of local information or who wish to discuss local issues.[51]

Furthermore:

> The Commission believes that, in the new television environment, there are sufficient market incentives to ensure that audiences will continue to receive a variety of local news without regulatory requirements. News programming is a key element in establishing a station's identity and loyalty with viewers and is generally profitable. Further, licensees may not solicit local advertising in a market unless they provide local news or other local programming.

That said, shortly after the launch of the Committee's study, the CTV television network announced that its nightly MCTV newscasts from Sudbury, Sault Ste Marie, North Bay/Muskoka, and Timmins would be merged into a single program, to be broadcast from Sudbury.

According to Mr. Arthur Simmons, CTV's decision to consolidate local programming is merely a sign of the times:

> Despite overwhelming opposition from Saint John residents and other New Brunswick communities, the CRTC approved CanWest Global's acquisition without demanding it retain a local presence. Today, CanWest Global serves New Brunswick with a pretaped newscast that is fed from Dartmouth, Nova Scotia. It doesn't even have a production studio in New Brunswick. ... This is the scenario you will find across Canada, outside of the large urban centres. Local reflection isn't somewhat lacking, it's on the verge of becoming extinct.[52]

In a letter to the Committee, CTV defended itself by stating that the CRTC "acknowledged the value of an approach which combined local inserts in a regional newscast by considering the entire program as local content to each station providing input."[53] Thereafter, in an appearance before the Committee, CTV's parent company, BCE, added that it is particularly difficult to service smaller markets such as Northern Ontario due to the impact of satellite competition in rural and remote areas. As Mr. Alain Gourd explained:

> There is pressure from the erosion of viewing on conventional stations, and there is a greater impact of direct-to-home in these areas, as opposed to downtown Ottawa or Toronto. These pressures are reducing the financial ability to sustain the provision of local voices. What we have tried to do ... is to keep the provision of local voices, whether in Atlantic Canada or northeastern Ontario, by using digital technology to maximize the allocation of the resources toward coverage, toward the gathering of news, as opposed to having full-fledged production facilities in each of the localities.
>
> So what we are trying to do is to develop a model where in a given community, like Atlantic Canada, we put the production facilities in one central location, however, we keep journalists in the various localities to cover the news. In northeastern Ontario, we still have 43 people in the news department, including 26 reporters. And we're the only ones there. There's nobody else in TV. We maintain across the board, whether in Atlantic Canada or northeastern Ontario, a commitment to provide 15.5 hours of regional and local programming. And for each community, there is a local segment that will be dedicated to that community only and will not be reproduced elsewhere.[54]

The Canadian Cable Television Association (CCTA) showed some sympathy for CTV's situation. It observed that the provision of local services is a demanding exercise — especially in smaller markets. The Association drew special attention to the plight of small distribution systems and noted that geographic remoteness, small customer bases, smaller cable network capacities, the cost of capital, financing difficulties and competition with legal and illegal satellite services all hurt local programming. Some small cable operators, they added, are shutting down, leaving satellite services as the only available choice for consumers in their areas.[55]

Despite extensive testimony from witnesses concerning the apparent demise of local news, the Committee also saw compelling evidence that local programming is alive and well in some contexts. In Toronto, for example, the Committee toured CHUM's vibrant storefront studios at CityTV and spent time talking to their energetic and enthusiastic on-air and off-air staff. CHUM's programming model, which it has replicated in smaller centres, uses a downtown location and an open studio format so that on-air hosts may seamlessly blend interactions with the local community into live and recorded programming.

This storefront approach has been so successful that it has spawned scores of imitators across Canada and, indeed, around the world. In fact, even the CBC has recognized the value of this model. As Mr. Robert Rabinovitch told the Committee:

> Open the doors, let the public in to see what you're doing, see who your stars are, and see them in operation. This is one of the reasons we want to do it, especially for faceless radio. We find in Winnipeg, where there is a studio open to the public, the people come by, wave, say hello, and look.[56]

As for solutions to the challenge of delivering local new and non-new programming, Mr. Drew Craig, president of Craig Broadcast Systems, suggested that the Committee think in terms of a diversity of ownership. He noted that a "diversity of ownership ensures that the broadcasting system does not become too staid and allows for innovation and new program ideas" and that a diversity of ownership is necessary in order to have a diversity of voices.[57] Taking this point a step further, Mr. Jan Pachul, argued that "preference to local ownership of stations" should be a priority and that "[o]ut-of-town owners should only be considered if there are no local applicants."[58]

The Minister of Canadian Heritage raised another potential solution. She proposed public-private partnerships between the CBC and its private sector counterparts, such as CTV in Northern Ontario:

> I learned only last week that CBC television has just signed an agreement with TQS in Quebec, to actually have CBC reporters working in TQS stations. I see that as an innovation. I see that as a way for the public broadcaster to be present in the regions without necessarily having to establish the whole infrastructure. If CBC and CTV were able to work out a similar arrangement in northern Ontario, I would see that as a win-win for everybody."[79]

Chapter 6 has more on the CBC's role in the delivery of local programming. Before proceeding, however, it is worth closing with the thoughts of Professor David Taras on the importance of loyalty in any broadcaster's local programming strategy:

> I can give you a very local commentary based on my experience in Calgary. When CBC decided to leave Calgary and close the local supper hour news, it was second in the market in a thriving market and was making money. It decided at that point, in 1990, because of the overall budgetary picture, not to continue with a local strategy. Calgarians left in droves. In fact, in one night, 60,000 people went from CBC to the local CFCF, a CTV affiliate. They have never come back. I think there's an extent to which people in the west feel abandoned by the CBC because there's no strong local connection. There's no sense of loyalty because the local face isn't there."[80]

C. Regional Broadcasting

The *Broadcasting Act* makes four specific references to regional expectations for the Canadian broadcasting system. Section 3.(1)(*i*)(ii) states that: "programming provided by the Canadian broadcasting system should … be drawn from local, regional, national and international sources." Section 3.(1)(*m*)(ii) notes that the CBC should "reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions." Section 3.(1)(*r*)(iii) expects programming provided by alternative television programming services to "reflect Canada's regions and multicultural nature." And, Section (5)(2)(*b*) calls for the CRTC to take "into account regional needs and concerns" in its oversight of the Canadian broadcasting system.

The CRTC defines regional broadcasting as follows:

> … "regional television station" means, in relation to a distribution undertaking, a licensed television station, other than a local television station, that has a Grade B official contour that includes any part of the licensed area of the undertaking.[61]

With the notable exception of the CBC, regional television is almost exclusively the domain of provincial educational broadcasters. Canada's educational broadcasters are widely recognized as voices of their respective regions. These services appeal to broad audiences, ranging from adult learners and adolescents, to pre-school children and specific demographic groups. Five provinces have provincial broadcasters; Manitoba and the four Atlantic provinces do not. These provincial services are profiled in Chapter 7.

The CRTC very rarely talks about regional broadcasting and when it does it is typically mentioned in parallel with local concerns. To determine which programs qualify as regional, it does, however, make the following distinctions:

> Canadian regionally-produced programs [are] English-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal, Toronto or Vancouver. Programs in which the principal photography occurred on Vancouver Island will also be considered regionally produced programs.
>
> French-language programs at least 30 minutes long (less a reasonable amount of time for commercials, if any) in which the principal photography occurred in Canada at a distance of more than 150 kilometres from Montréal.
>
> Programs of News (Category 1), Analysis & Interpretation (Category 2), Reporting & Actualities (Category 3) and Sports (Category 6) are excluded.[62]

What the Committee Heard

Most of what the Committee heard about regional concerns had to do with the CBC's programming priorities. These issues are dealt with in Chapter 6. There were, however, four other areas raised about Canada's regions: definitions of regional; regional inequities; regional programming and production support; and, support for educational broadcasting.

In his appearance before the Committee, Mr. Arnold Amber summed up well the problem with the word "regional":

> We must clear up in the [A]ct what is regional and what is local. Having been at CBC for a number of years, I have had the great advantage of seeing one administration at CBC determine that regional was local, and another one determine that local is regional. It depends on what's playing in that administration in a given year, and this must be cleared up.[63]

Indeed, part of the problem with the term regional is that one person's regional can be someone else's local, regional or provincial; and, depending on one's location, it can be all three. For example, in Prince Edward Island, Mr. David Helwig made the following observation about local and regional:

> The problem with discussing the Island as an example is that the population is so small. It is a province, it is a unit, it is a unity, but the point that is being made here is that the question of what is local, what is provincial, and what is regional is blurred a little bit here. In P.E.I. clearly you need to have what may appear to be local broadcasting, but it is also provincial broadcasting. So the analogy between the locality here and the locality of Brandon, for example, is perhaps not a legitimate one. For that reason, I'm not sure that writing "local" into the [A]ct would make any significant difference.[64]

But in the case of regional inequities, it was clear that Prairie and Atlantic Canadians have a very specific sense of what is regional. These citizens told the Committee that they were troubled by the concentration of financial resources in Toronto, Montréal and Vancouver. In Edmonton, for example, Ms. Nancy Wahl, observed that "the majority of the work is being done in [Central Canada]."[65] Furthermore, scheduling decisions have become so centralized that they are detrimental to the wishes of local, and by extension, regional audiences. She explained:

> Due to programming decisions being made outside the community, there is no effort being made to place these programs where they will be seen. Instead, they are being put into slots where almost no one is watching. It doesn't seem like much of a commitment to our

> community or the talents of the independent producers in the area, not to mention the regional commitment.[66]

Making matters worse is that broadcasters have no obligation to carry regional programs.[67] As Ms. Gretha Rose explained:

> There are no requirements for broadcasters to carry a portion of their programming from the regions. The regions do not normally have access to central Canada where all the decisions are made, let alone the international marketplace to put together international co-productions. Regional representation does not exist, in my opinion.[68]

Moreover, because broadcasting is no longer the mass communications medium that it once was, the costs for regional programming have increased. As the Saskatchewan Motion Picture Association noted:

> … the television world has splintered into dozens of specialty channels … However, the financing available to those channels to buy our [regional] products has also splintered. Their marketplace, their ability to gain commercial revenue has been divided into smaller and smaller slices of the pie, that we all know. Therefore, the amount of money that they are able to provide to fill a half hour or an hour of broadcasting time is far less than the cost of producing a quality … product. And while we have a lot of customers, they don't have a lot of money.[69]

Several Nova Scotians forcefully outlined another regional concern: large corporations are buying regional entities, appropriating their regional status, and either reducing regional commitments or reaping the benefits intended for specific regions. Mr. Stephen Comeau of Collideascope Digital Productions cited the case of the Independent Film Channel, based in Halifax, which lost its Halifax-based production office six months after Alliance Atlantis purchased it in 2001.[70]

Similarly, in late 2001, Corus Entertainment moved its recently acquired Women's Television Network (WTN) assets from Winnipeg to Toronto. This was announced just six days after the CRTC had openly stated that the new proprietor should maintain the station in Western Canada. When asked about this move by Corus, the CRTC's Executive-Director of Broadcasting, Mr. Jean-Pierre Blais, told the Committee "we have … situations where we speak out loud, we just note, or we expect. This was more on the level of an expectation — hindsight's 20/20 sometimes."[71]

For Mr. Comeau, however, this move was "a blatant disregard for the CRTC's desire to have diversity in ownership geographically".[72]

Alliance Atlantis also bought Salter Street Films of Halifax in 2001. According to several witnesses, this type of acquisition means that regional producers are now competing with powerful subsidiaries of production houses based in Toronto, Vancouver or Montréal. For example, Mr. Richard Zurawski, of East West Media in Halifax, felt strongly that his company had unjustly been denied CTF funding. He explained:

> … we received 59 out of 59 points. We received the maximum allotted from the CTF, yet we did not qualify. We were the only Atlantic Canada production, and this office in Atlantic Canada gave the only money from their envelope to Alliance Atlantis, Salter Street, which I find outrageous… it's like being the only hockey team that shows up and it still loses the game.[73]

The Alberta Motion Picture Industries Association (AMPIA) raised a related problem, when it pointed out that:

> There appears to be a belief by some broadcasters that regional programming would not be of interest to national viewers. AMPIA respectfully disagrees. It is only by telling the stories of the unsung Canadian that we as a country can truly come together. Prior to recent consolidations, relationships with broadcasters at the regional level have allowed stories from Alberta to be developed and told to the rest of Canada and to the world. It is difficult now to find a program decision-maker in our region.[74]

Provincial educational broadcasters also raised the issue of support for production outside Canada's major centres. In its brief to the Committee, the Saskatchewan Communications Network argued:

> Regulatory structures and mechanisms put in place have served the interests of the portions of the Canadian broadcasting system located in the Toronto and Montréal "Centres of Excellence", while ignoring the other sectors and program types listed as being essential in the Act".[75]

For this reason, the Network believes that there is a regional void in programming options for Canadians:

> If television is the mirror we use to reflect our society and culture, then we have a problem, because we can't see our reflection. Television looks pretty much the same in Banff and Yorkton as it does in Vancouver and Toronto; you don't see anything about Yorkton or Banff in any of those places. Often the most significant regional or local programming is the changing ads on the TV listings channel.[76]

To deal with the challenge of producing and delivering regional programming, the Canadian Independent Film Caucus suggested that the Broadcasting Act could encourage a regime to foster viable inter-regional co-productions, acquisitions, and commissions.[77]

The SCN recommended proposed Canadian content bonus points for regional informational programming: 150% in non-peak viewing periods, and 200% in peak times. Furthermore:

> "Regional Informational Programming" be declared an underrepresented program area, in the same way as children's and drama programming, and is due similar access to production fund sources. SCN recommends that [the government][*] create a dedicated fund for the needs of these programs.[79]

Similarly, AMPIA suggested that the CRTC "include all regional benefits as conditions of licence," as there is "a devastating effect on regional production when the money flows back outside the region."[80] AMPIA was also of the view that the CRTC should:

> … establish clear public policies that avoid potential self-dealing practices for all broadcasters. We also recommend exploring reasonable limits to company ownership, so independent producers truly remain independent.[81]

For his part, Mr. Dan Viau urged regulation to ensure that regions with low population densities are served. He explained:

> … if the federal government, through the Broadcasting Act and the CRTC, does not require a strong and meaningful commitment to local and regional programming by off-air broadcasters, the Maritimes community will probably never again see itself on television outside of news shows.[82]

Finally, the Canadian Association of Broadcasters argued that local programming should be considered priority programming and called upon the government to create a special credit for non-news local programming.[81]

D. Proposed Solutions

In general, the Committee regards the CRTC's new community television policy as a step in the right direction. In particular, the newly created community television class (i.e., the *community programming service*) may, in some communities, help fill the void created by cable providers that do not (or cannot) serve local citizens. The Committee also supports the creation of a separate licence class for *community-based television programming undertakings*. It agrees that there are fundamental problems with the production and delivery of community and local programming and that there is a pressing need to create new spaces for such voices.

That said, several aspects of the CRTC's approach to community, local and regional programming troubles the Committee. **Indeed, the Committee observed a clear consensus among those who spoke on community, local and regional programming that the status quo is unsatisfactory and that the federal government must take action.** The Committee therefore makes the following proposals and recommendations, which it believes will help preserve and reinforce the important role of community, local and regional broadcasting in the Canadian broadcasting system.

Citizen Access

The Committee firmly believes that citizen access should remain a fundamental objective of the Canadian broadcasting system as it is only through access that a diversity of voices, views and representations can be ensured. Indeed, it is gravely concerned that the CRTC's post-1997 community television policy has significantly altered the way community cable stations are operated (for example, through centralization and networking by the cable companies). Therefore, even though the CRTC's 2002 community media policy includes the expectation that cable undertakings provide citizen access and promote training, the Committee is not convinced that this will necessarily trigger the desired result. For this reason, the Committee believes that citizen access to community television facilities should be a CRTC *requirement*, rather than an expectation.

RECOMMENDATION 9.1:

The Committee recommends that the CRTC require all broadcast distribution undertakings to provide community groups and volunteers with greater access to community television facilities for the production of local and community television programming.

The Committee recognizes that the way in which this requirement is implemented will necessitate recognition of the different situations of Canada's broadcasting distributors (i.e., cable vs. satellite). It should not, however, exempt any of these stakeholders from the provision of certain levels and types of citizen access.

Definitional Ambiguities and Inconsistent Policies

The Committee is of the view that the CRTC's new community media policy does very little to resolve the definitional ambiguities and inconsistencies inherent in the existing uses of the terms *community*, *local* and *regional*. On the contrary, it merely sheds light on the problem when it states that:

> … the Commission considers local community television programming to consist of programs, as defined in the *Broadcasting Act* (the Act), that are reflective of the community, and produced by the licensee in the licensed area or by members of the community from the licensed area. Programs produced in another licensed area within the same municipality will also be considered local community television programming.[84]

In the case of large metropolitan cities such as Montréal, Vancouver and Toronto, the Commission is even less clear:

> Licensees that provide community programming in the greater Toronto, Montréal and Vancouver areas will be expected to set out their plans and commitments at licence renewal time as to how they will reflect the various communities within their licensed areas in these urban centres.[85]

While some might argue that these new definitions lend clarity to notions of what is local within the context of community television, the reality remains that they merely amplify the many definitional problems raised by witnesses who appeared before the Committee. Indeed, as should be clear by now, finding satisfactory definitions of community, local and regional is difficult.

It is equally clear that many of the issues raised in this chapter stem from the absence of a common understanding of key terms and the bewildering array of policies that the CRTC has developed over time. For example, community channels could be independently run and advertising regulations could be harmonized. This is why the **Committee believes that the time has come to rationalize and harmonize the many CRTC policies that address various elements of community, local and regional broadcasting**. Accordingly:

RECOMMENDATION 9.2:

The Committee recommends that the Department of Canadian Heritage develop a Community, Local and Regional Broadcast Policy in consultation with key broadcasting industry stakeholders, including public, private, community, educational and not-for-profit broadcasters and related interest groups.

The Committee is of the view that the desired outcome of this process should be the formulation of one clear and coherent policy for community, local, regional programming and broadcasting, which would also bring together policy parameters for ethnic, low-power, campus and minority language broadcasting. The Committee also expects this policy to include a clear statement of objectives, realistic estimates of the cost of meeting those objectives and a comprehensive set of performance measures.

This policy should also recognize the contributions that can be made by different elements within the system, such as community access, and should — unlike existing circumstances — be technologically neutral with respect to different distribution mechanisms. In other words, the demands on the cable system should not be materially different than the demands on over-the-air broadcasters or satellite distribution undertakings, the latter of which are discussed below.

The Role of Direct-to-Home Satellite

Despite the rapid growth of Canada's direct-to-home (DTH) distribution market (from a 2.6% market share in 1998 to 16.2% in 2001), the Commission's new community media policy reaffirms its earlier decision that it "does not consider the concept of DTH community channels to be in keeping with its proposed objectives to ensure more locally-produced and locally-reflective community programming."[36]

In other words, the fastest growing mode of broadcast delivery in Canada remains exempt from the delivery of community-based programming since it is not "in keeping" with the Commission's objectives. **The Committee finds this particular determination to be highly disconcerting and reminds the CRTC that Canada's broadcasting policy states that our broadcasting system is a single system comprised of "public, private and community elements."** Wishing to underscore this fundamental point — a point which is emphasized in the chapters that make up Part III of this report — the Committee makes the following recommendation:

RECOMMENDATION 9.3:

The Committee recommends that the Government of Canada take steps to ensure that the departments and agencies responsible for the Canadian broadcasting system continue to treat the system as a single system.

Keeping this important policy principle in mind, **the Committee therefore insists that a solution be found to ensure that Canada's DTH satellite services play a more direct role in the delivery and provision of community television programming.** Indeed, the Committee is aware of at least two options (time-slicing and satellite Internet (see inset)) that would enable Canada's satellite service providers to play a more active role in community programming.

Some Delivery Options for Community Television

A number of scenarios can be seen to exist for the delivery of Community television:

The Traditional Delivery Model — Where a community is served by cable, the cable operator provides the community channel as part of the suite of retransmitted TV channels.

Micro Transmission — Where no cable exists but a local micro transmitter is in place, community television signals can be retransmitted using regular VHF frequencies rather than by cable. (Note there is some interest in using 802.11/802.16 for this "last mile" transmission in some smaller communities).

DTH Satellite — All DTH receivers can be programmed individually (through the use of transmitted codes) to be able to allow access to any broadcasted channels. In addition, it is possible to program those same receivers to be able to "time-slice" those same channels. This opens up the possibility for a community channel bulletin board to be transmitted on a time-shared basis, stored locally and to be updated based on a set schedule. Where a larger audience is required to watch a community video across many communities, a transmission of the appropriate code could allow this. (Note that while the elements of this solution are commonly used, use in the way suggested is not a current practice). The question remains of how the information would get to the Broadcasters hub (in the ExpressVu case this would be to its Toronto location) and what return (i.e., financial) the DTH provider would see for the use of this channel.

Satellite Internet — Not strictly a broadcast solution. This solution seems to be the most easily accessible and cost-effective. Satellite broadband Internet services are fast being implemented within the rural and northern communities (Knet is one such suppliers there are seven to eight currently offering the backbone network). There are an increasing number of ISPs (FCNQ being one) who offer Internet service to communities using the satellite backbone network. In this case a community could work with an established ISP (Internet Service Provider) to set up a community web site with some designated (and trained) person within that community or a contracted third party who could take local input and create a suitable

Internet page (or series of pages). Many Northern communities have already gone this route.

Source: Keith Fagan and Associates, *Satellite Broadcast Information*, Prepared for the Standing Committee on Canadian Heritage.

Accordingly:

RECOMMENDATION 9.4:

The Committee recommends that the federal government by order in council direct the CRTC to revisit its decision to exempt DTH satellite services from the provision of community television services.

In this regard, the Committee notes that the capacity of the broadcasting system to carry additional channels has increased considerably over the past decade. On cable systems, for example, eight digital channels can replace one analog channel; moreover, depending on the number of transponders, most modern satellites can easily handle more than 100 channels. In addition, accordingly to information supplied to the Committee, each channel on a Canadian satellite typically costs between $150,000 and $200,000 a month. This means that another eight to ten digital channels offering the best of English and French-language community, local or regional programming could very easily be launched and delivered for less than $20 million a year.[illegible]

Thus, since it is apparent that it is already technologically (and economically) feasible to create more space in the Canadian broadcasting system, the Committee believes that it is imperative that the government and industry work together to develop a strategy for the creation of new digital channels (in both official languages) that would deliver the best of Canada's community, local and regional programming to Canadians. With this in mind:

RECOMMENDATION 9.5:

The Committee recommends that the Government of Canada investigate the feasibility of creating new digital channels for the distribution of the best of Canada's community, local and regional programming to Canadians.

This feasibility study should address how these channels would be owned and operated, how programming would be selected and distributed and how revenues would be appropriately shared to support the production of additional programming.

The Committee was also told by a number of witnesses that the provision of local signals to subscribers by Canada's DTH service providers is, at best, unsatisfactory. While the Committee is aware that there are proposals from Bell ExpressVu and StarChoice before the Commission concerning this matter at this time and that negotiations are underway to find a fair solution, it is gravely concerned that these proposals would lead to less money for the Canadian Television Fund (this point is addressed in greater detail in Chapter 5). Thus, while the Committee is encouraged that efforts are being made to address this situation, it nevertheless feels compelled to make the following recommendation:

RECOMMENDATION 9.6:

The Committee recommends that the CRTC work with broadcasting industry stakeholders to find a solution for the carriage of local signals via DTH satellite, to ensure as much local programming as is appropriate and feasible is made available to subscribers. This solution, however, should not lead to reduced contributions by DTH satellite service providers to the Canadian Television Fund.

That said, the Committee is also aware that the House of Commons Standing Committee on Official Languages issued a report in February 2003 in which it called for the delivery of all CBC/SRC regional signals via DTH satellite. In light of the Corporation's importance as a public policy instrument and the necessity that all Canadian citizens have equal and fair access to a local (or regional) CBC and SRC signal, the Committee makes the following recommendation:

RECOMMENDATION 9.7:

The Committee recommends that the government by order-in-council direct the CRTC to require Canada's direct-to-home satellite service providers to carry the signals of local television stations of the CBC/SRC.

This does not mean, however, that the Committee believes that every CBC and SRC station requires carriage on DTH satellite. On the contrary, the Committee is of the view that a strategy could (and should) be developed to ensure that a reasonable amount of CBC/SRC local and regional news and non-news programming is made available to DTH subscribers.

Funding Support

The Committee is very concerned that licencing restrictions, arbitrary distribution limitations and ill-considered regulations are preventing community, local and regional programming from being launched or properly distributed. Moreover, it cannot help but conclude that existing mechanisms and players have been proven short of the task of providing community, local and regional programming. As the Committee pointed out in the chapter dealing with the CBC, the Corporation lacks the resources to fulfill its mandate. In addition, as noted above, there are serious problems with the delivery of local signals via satellite.

Witness testimony on these points was eloquent, with many, including the Minister of Canadian Heritage, suggesting that partnerships would go a long way to resolving these challenges. For these reasons, the Committee believes that an innovative, new funding measure is required, one that is tailored to the needs of the Canadian system, as expressed by witnesses. Accordingly:

RECOMMENDATION 9.8:

The Committee recommends that the Department of Canadian Heritage create a Local Broadcasting Initiative Program (LBIP) to assist in the provision of radio and television programming at the community, local and regional levels.

As envisioned by the Committee, the LBIP will have a number of bold features. The Program should be designed so that initiatives will come from local communities and have the backing and involvement of key partners. As different communities will have different needs, a variety of models will flourish. In one community, a civic group, a local company and a broadcaster might apply to the Program to broadcast a local talent show, a charitable event, or a holiday concert. In another community, a local broadcaster could, with appropriate backing, set up a studio or buy critical equipment so that local events can be better covered. While the LBIP would be accessible to all broadcasters, it would also be a means for drawing the CBC back into local broadcasting.

The Committee notes that the Department of Canadian Heritage will need to develop clear definitions, criteria, objectives and targets for the funding of "community", "local" and "regional" broadcasting projects. In the Committee's view, the Local Broadcasting Initiative Program should reflect the objectives developed as part of a new Community, Local and Regional Policy (discussed above). Furthermore, it should allow local communities to identify specific needs and should be attractive to broadcasters who otherwise have no incentive to do local programming. As a consequence, it need not be symmetrical across Canada but should allow for projects tailored to particular needs.

Overall, the Committee is persuaded that partnerships of the sort that would be made possible by the LBIP would go a long way to resolving many of the problems with community, local and regional programming production. It would also allow local broadcasters to add value to their program offerings and would provide a new range of possibilities for community broadcasters.

Accountability

As noted throughout this report, the Committee has grave concerns with the absence of valid and reliable data on the Canadian broadcasting system. Moreover, it is deeply troubled by the lack of measurement and reporting on various elements of the system. For example, as observed earlier on, **the Committee was very frustrated by the absence of data on community television and is dismayed that virtually no information exists on what happens as a result of cable company expenditures (approximately $75 to $80 million) in support of community television each year**. For this reason:

RECOMMENDATION 9.9:

The Committee recommends that the Department of Canadian Heritage in collaboration with the CRTC be required to issue an annual report on community television. This report should include information on training, citizen access and involvement (paid and volunteer), types of support and the hours and range of programming produced.

Furthermore, and in light of the recommendations made in this chapter:

RECOMMENDATION 9.10:

The Committee recommends that the changes to community, local and regional broadcasting that result from the implementation of the recommendations made in this report be evaluated by the appropriate department within two years of their introduction and at reasonable intervals thereafter (e.g., every five years). These reports should also be submitted to this Committee.

Endnotes

[1] Ethnic, low-power, campus and francophone minority radio and television are profiled in Appendix 11.

[2] Canadian Radio-television and Telecommunications Commission, *Policies Respecting Broadcasting Receiving Undertakings (Cable Television)*, 16 December 1975, p. 4.

[3] Report of the Task Force on Broadcasting Policy (Caplan-Sauvageau) (Ottawa: Minister of Supply and Services Canada, 1986), p. 491.

[4] Public Notice CRTC 1997-25.

[5] Public Notice CRTC 2002-61.

[6] Ibid.

[7] Ibid.

[8] Public Notice CRTC 2001-129.

[9] Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[10] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[11] Rogers Television, *Out of the Fog*, Sample of Viewer Feedback for 7 November to 24 April 2002, Site Visit, 29 April 2002.

[12] Ibid.

[13] Ibid.

[14] Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[15] Ibid.

[16] Meeting of the Standing Committee on Canadian Heritage, 25 Feb 2002.

[17] Meeting of the Standing Committee on Canadian Heritage, 19 March 2002.

[18] Meeting of the Standing Committee on Canadian Heritage, 2 May 2002.

[19] Presentation to the House of Commons Standing Committee on Canadian Heritage, Cogeco Cable, 15 June 2000.

[20] Unlike independent community radio stations, independent organizations such as the CTGC are not licenced by the CRTC. It follows that practically all community television — directly (BDU-run channels) or indirectly (independently-run channels) — are dependent on cable transmission.

[21] Cogeco Cable, Meeting of the Standing Committee on Canadian Heritage, 15 June 2000.

[22] Lynda G. Leonard, Letter to the Standing Committee on Canadian Heritage, 20 February 2002.

[23] Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[24] Meeting of the Standing Committee on Canadian Heritage, 2 May 2002.

[25] See Public Notice CRTC 2000-13.

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Impératif français, , Brief to the Standing Committee on Canadian Heritage,, p. 1.

[30] Meeting of the Standing Committee on Canadian Heritage, 9 April 2002.

[31] On 17 April 2003 the CRTC approved a radio licence for *La Coopérative radiophonique de Toronto Inc* for the Greater Toronto area.

[32] Meeting of the SCOCH, 9 April 2002.

[33] Meeting of the Standing Committee on Canadian Heritage, 2 May 2002.

[34] Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.

[35] Alliance des radios communautaires du Canada, Brief, p. 3.

[36] Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[37] Ibid.

[38] Normally, Department of Canadian Heritage funding is considered annually. See "Les radios communautaires reçoivent l'aide de Patrimoine Canada," *L'Acadie Nouvelle*, 26 July 2002. Since Mr. Desgagne's testimony, the Ministry has promised $470 000 to be given to the Alliance des radio communautaires du Canada over the next two years ($235 000 each year).

[39] Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[40] Ibid.

[41] Meeting of the Standing Committee on Canadian Heritage, 19 March 2002.

[42] Public Notice CRTC 1994-32.

[43] An "official contour" means a service contour marked for a licenced television station, licenced AM station or licenced FM station on the map most recently published under the *Department of Industry Act* by the Minister of Industry pertaining to that station. See: Public Notice CRTC 1997-84.

[44] Public Notice CRTC 1999-97.

[45] Indeed, the elasticity in local programming expectations for conventional broadcasters is so great that some markets are expected to air no less as few as 1.5 hours of original local programming each week (e.g., CKNY-TV-11 Huntsville), while others are required to broadcast more than 40 or more hours (e.g. CHAN Vancouver).

[46] The decline in AM stations is due largely to the migration of AM stations to FM frequencies during this period to take advantage of better signal quality and to maximize revenues.

[47] Public Notice CRTC 1998-41.

[48] Public Notice CRTC 1993-38.

[49] Public Notice CRTC 1998-41.

[50] Ibid.

[51] Public Notice CRTC 1999-97.

[52] Arthur Simmons, National Representative, Communications, Energy and Paperworkers Union of Canada, Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[53] Letter to the Standing Committee on Canadian Heritage, 26 October 2001.

[54] Meeting of the Standing Committee on Canadian Heritage, 7 May 2002.

[55] Ownership concerns issues were also raised with regard to CanWest-Global's control of Southam newspapers and BCE's control of the *Globe and Mail* newspaper. The main concern, which has to do with editorial independence, is addressed in Chapter 11.

[56] Meeting of the Standing Committee on Canadian Heritage, 14 March 2002.

[57] Meeting of the Standing Committee on Canadian Heritage, 1 March 2002.

[58] Meeting of the Standing Committee on Canadian Heritage, 19 March 2002.

[59] Meeting of the Standing Committee on Canadian Heritage, 8 November 2001.

[60] Meeting of the Standing Committee on Canadian Heritage, 29 January 2002.

[61] Public Notice CRTC 1997-84.

[62] Public Notice CRTC 1999-205.

[63] Arnold Amber, Director, The Newspaper Guild Canada, Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[64] Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[65] Ibid.

[66] Ibid.

[67] Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[68] Ibid.

[69] Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[70] Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.

[71] Meeting of the Standing Committee on Canadian Heritage, 29 November 2001.

[72] Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.

[73] Ibid.

[74] Connie Edwards, President, Alberta Motion Picture Industries Association, Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[75] Saskatchewan Communications Network, Brief, p. 3.

[76] Ibid., p. 6.

[77] Canadian Independent Film Caucus, Brief p. 7.

[78] The SCN Brief, called "Voices in the Wilderness" was submitted to the CRTC in 1998. SCN, at that time, called upon the CRTC to implement its recommendations. Presumably the network's recommendations are now directed at Parliament, through the Standing Committee on Canadian Heritage.

[79] Saskatchewan Communications Network, p. 17.

[80] Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[81] Connie Edwards, Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[82] Meeting of the Standing Committee on Canadian Heritage, 1 May 2002.

[83] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[84] Public Notice CRTC 2002-61.

[85] Ibid.

[86] Ibid.

[87] Keith Fagan and Associates, *Satellite Broadcast Information*, Prepared for the Standing Committee on Canadian Heritage.

THE STATE OF THE SYSTEM

Chapter 10

Northern and Aboriginal Broadcasting

A. Background

Northern broadcasting traces its origins to the Second World War, when Canadian and American armed forces personnel established small radio stations in the North. Thereafter, CBC's English-language radio network supplied recorded programs to these small stations, beginning in 1950. In 1958, Parliament accepted a formal proposal submitted by the Corporation to create a Northern Service and allocated funds for this purpose. The CRTC also licenced community radio stations in the North in 1970, and a northern radio network in 1981.

By 1985, 250 community radio stations were serving the North, many by local native communications societies. From the outset, many Northerners had serious concerns over the availability and programming content of the services they were receiving. This is because most programs were primarily in English, with limited reflection of native peoples and their lifestyles. For these reasons, in 1979, the CRTC established a committee on the Extension of Service to Northern and Remote Communities, which ultimately recommended that the federal government provide funding to develop Aboriginal broadcasting networks to meet Canada's obligation to provide the country's indigenous peoples with opportunities to preserve their language and culture.

In 1981, the Commission licenced a television network to serve Northern communities, to be carried by CANCOM, a new satellite distribution service that it had also licenced that same year. Two years later, the federal government introduced a policy on Northern broadcasting, and created the Northern Native Broadcast Access Program (NNBAP) to fund the production of Aboriginal programming. The NNBAP's purpose was "to ensure that native broadcasters have fair access to a reasonable amount of quality broadcast time" and to "improve the quality and quantity of access by northern native broadcasters to the Canadian broadcasting system."[1] To do so it offered funding to 13 regions in Northern Canada and their native communications societies, provided they had reached distribution agreements with existing broadcasters, such as the CBC.

The Northern Native Broadcast Access Program

The Northern Native Broadcast Access Program (NNBAP) provides funding to Aboriginal communications organizations for the production and broadcast of radio and television programs to Aboriginal audiences in the Yukon, Northwest Territories, Nunavut and the northern regions of Newfoundland, Quebec, Ontario, Manitoba, Saskatchewan, Alberta and British Columbia.

Its objective is to provide funding and assistance for the production and distribution of Aboriginal radio and television programming in Aboriginal Languages that reflect Aboriginal culture, community issues, concerns and current affairs. The communications societies serve approximately 400 communities in the three Territories and the northern portion of seven provinces.

Program funding may cover a wide variety of expenses, including: staff salaries and benefits; satellite uplink rental; production costs and audience surveys. Distribution funding is provided on a priority basis, with unserved regions as the first priority.

There are 13 non-profit communication societies that serve the Aboriginal communities of Canada's northern regions. Organizations that receive funding must be legally incorporated non-profit Aboriginal communications societies, which are democratically controlled by the people in the region to be served, and which have no political or religious goals. Managed by the Department of Canadian Heritage, the NNBAP has an annual budget of $9 million.

While six native communications societies chose to concentrate on radio programming, seven undertook television production, producing approximately 10 hours per week of programming content. Continued program distribution problems, however, finally led the CRTC to issue a policy on native broadcasting that applied to the entire country, rather than to Northern Canada alone; that said, funding problems remained.

It was not until the creation of Television Northern Canada Incorporated (TVNC) in 1991 that there was a specifically Aboriginal network, by and for Aboriginal peoples — the first of its kind in the world. The network emphasized cultural, social, political, and educational programming of interest to Aboriginal peoples residing north of the 55th latitude.

It was also in 1991 that Section 3 of the Broadcasting Act was amended to state that: "the Canadian broadcasting system should … reflect … the special place of Aboriginal peoples within [Canadian] society." Furthermore, "programming that reflects the Aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose."

In response to these two references the CRTC confirmed in 1998 that a national Aboriginal channel should be "widely available throughout Canada in order to serve the diverse needs of the various Aboriginal communities, as well as other Canadians."[2] Soon thereafter, TVNC was granted a licence to operate The Aboriginal Peoples Television Network (APTN).[3]

Apart from APTN's national service there are a further 10 originating and 95 rebroadcasting native television stations. The CRTC has also licenced two native television networks: Native Communications Inc. and Wawatay Native Communications.

As for Aboriginal radio, there were 37 licenced radio stations (Type B) operating in markets where there is at least one other commercial AM or FM licenced radio station in 2001. The number of Aboriginal radio stations operating in markets where no other commercial radio station operates (Type A) is unknown, as these stations, since 1998, have not been required by the CRTC to hold a broadcasting licence.

In 1986 the Caplan-Sauvageau Task Force Report reminded Canadians that:

> Native people have special rights by virtue of their Aboriginal status. These rights, now enshrined in the Canadian Constitution, are a part of the laws, customs and treaties of the land. Although not fully defined, Aboriginal rights are certain to include a protection and enhancement of native languages and culture.[4]

The Committee believes that this perspective holds as much relevance today.

B. What the Committee Heard

In Halifax, the Committee was told by Mr. Gary Farmer (Aboriginal Voices Radio Inc.) that:

> The Canadian native broadcasting system should be a place where all Canadians in every region of the country, rural and urban, French and English, can see a reflection of Aboriginal Canada;[5]

It was also his view that broadcasting policy and legislation should affirm: "the priority of developing and maintaining a Canada-wide native-controlled broadcasting system."[6] Furthermore, "Canadian native broadcasting [must] be recognized as a cornerstone of Canadian programming in the Canadian broadcasting system."[7]

The Committee heard testimony from Northern and Aboriginal broadcasters and programmers in Winnipeg, Halifax, and Ottawa. Chapter 7 reviews the significance of the Aboriginal Peoples Television Network (APTN) and the challenges it faces in today's fragmented broadcasting environment. This section reviews general issues raised by witnesses concerning a lack of support to non-APTN broadcasting organizations that serve Northern and/or Aboriginal communities.

The challenges faced by Canada's Northern and Aboriginal broadcasting operations were simple: money, equipment, travel, training, and predictable (stable) funding. The testimony of Mr. Paul Quassa, senior producer for the Inuit Broadcasting Corporation, captures well the sense of frustration that was expressed by many witnesses:

> I'm proud of what we are doing at IBC. I am proud of the people who work for IBC and overcome obstacles day after day in order to get their shows done. We deal with equipment that is old and that breaks down. It often must be sent to southern cities to be fixed, and sometimes it takes months until we see it again. A lot of our equipment cannot even be fixed anymore; parts no longer exist. We deal with equipment that is subjected to the harshest of weather conditions. We work in buildings that were never intended to be television facilities of any fashion. Although we are creative, there is only so much you can do to turn an old pinball hall into a television studio.

> We deal with the most expensive travel costs in this country. We have 26 communities in Nunavut that should be reflected in our shows, but each year we are only able to travel to a few communities and usually only for a short time.
>
> We are limited in our access to training. There are no broadcast training facilities or journalism schools in Nunavut. There are no seminars or workshops in our industry unless we organize and pay for all associated costs ourselves.
>
> IBC staff are generally paid below what is industry standard anywhere in the country, and we live in an area where everything costs twice as much as anywhere else. We do not have the benefits that major employers in Nunavut give, such as housing, pension plans, vacation assistance, etc. We do not have stability in our funding. Our ability to plan is limited and our job security is limited.[8]

Other obstacles noted by witnesses included having to cope with a diversity of languages and problems with archival storage.

The cultural and educational nature of Aboriginal Broadcasting was emphasized by Ms. Shirley Adamson, General Manager of Northern Native Broadcasting, Yukon:

> For the Yukon first nations people, who have an oral tradition, these media were quickly embraced. Each day we provide original programming through which our people can enjoy, learn from, and be inspired by each other's talents and stories. Our independent news and current affairs coverage enables all Yukoners to have an informed and educated view of a range of contemporary issues from an Aboriginal perspective.
>
> We have an impressive audio and video archive that documents a disappearing era in the history of our people and the development of a new, contemporary form of Aboriginal culture that combines our heritage with an active role in Yukon and Canadian society.
>
> Of the eight dialects spoken in the Yukon, at least five are used continually in our programming. The immersion underpins the teachings of languages and cultures in our homes and in our schools.[9]

Mr. Ramond Menarick, President of the James Bay Cree Communications Society, also highlighted the educational and cultural elements of Northern and Aboriginal broadcasting:

> Our elders have taught us that our language is the foundation of our culture, and in order to sustain it we cannot take it for granted but must use it continuously. In order to maintain this we must use the influence of radio media. Of the many things we have taken from the non-native culture, the radio is one of the most important.[10]

In Northern regions, independent, not-for-profit, broadcasting organizations are commonplace. In many respects, these various societies (such as the Société de communication Atikamekw-Montagnais (SOCAM)) are not unlike some of the community radio networks (such as the Réseau francophone d'Amérique) that appeared before the Committee. This is further evidence of how the boundaries between community, local and regional programming can blur.

At the same time, the Committee learned that Northern and native communications societies must often deal with a full range of communications needs. For example, SOCAM's Director General, Mr. Bernard Hervieux, told the Committee that:

> The SOCAM wants to improve communications between the various communities through newspapers, magazines, radio and television programs, films, and basically any written, spoken or visual communications tools; provide live broadcasting of news programs on Aboriginal issues pertaining to culture, the economy and community life in the language of each of those two nations; involve community radio stations in the business' organizational activities; provide technical support and training to local stations to ensure proper rebroadcasting of the network's programs; launch projects designed to improve communications and relationships between Aboriginal peoples, between the two nations and between member communities by using new information technologies and communications; operate a broadcasting network for 14 local member stations; establish cooperative and complementary ties with local community radio stations; organize adequate programming that reflects the Atikamekw and Innu culture; inform the locals of major news events that directly affect them; provide local radio stations and their staff with adequate equipment, tools and communication techniques; implement training programs; provide translation and interpretation services; design a television production centre; develop community access via Internet to new

> information technologies and communications technologies by implementing multimedia access centres for communities — and I could name 23 or 24 communities in Quebec —; implement communication services and infrastructures to support initiatives pertaining to health, learning and community access to cover social and community activities...[11]

Making matters worse, these responsibilities are often exacerbated by virtue of their geographic isolation. For example, the CBC's Regional Director, Ms. Cathie Bolstad, told the Committee about the problem of non-carriage on satellite, which has been made worse as cable operators have abandoned remote areas. She noted that 39% of TV households in the North subscribe to either StarChoice or ExpressVu; as a result, they do not receive CBC North programming.

Ms. Elizabeth Sabet-Biscaye, Executive Director of the Native Communications Society of the Western N.W.T., also described the need and the challenge for her people:

> Traditionally, we are storytellers. Radio, TV, and in some cases the newspapers give us the medium to do so effectively, in a lot of cases in our own language. Unfortunately, because of limited funding and other limited resources, we are continually struggling to maintain this very critical service. Challenges include lack of or outdated equipment, diverse languages, and various levels of language development.[12]

Interestingly, Canada's Northern and Aboriginal broadcasters described their cultural struggle as being analogous to that which Canada faces internationally. As Ms. Shirley Adamson explained:

> Change is constant for first nations. We're almost overwhelmed with the cultures and languages of other people. We struggle daily to maintain our identity. Because of that, we understand the desire of Canada to seek ways to safeguard, enrich, and strengthen what they see as their cultural fabric. We know also that the fabric is not whole without the languages and cultures of first nations woven in.[13]

In short, Northern and Aboriginal broadcasters from all regions asked for more direct support from government. Such support, they explained, is vital to their survival. Indeed, as Ms. Catherine Ann Martin of APTN noted, broadcasting is "a medium that's helping us to make sure that the future, and seven generations ahead of us, will have something from our people today." [14]

C. Proposed Solutions

The Committee strongly believes that the present wording of section 3.(1)(*o*) of the *Broadcasting Act*, stating "programming that reflects the Aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;" is discriminatory. The use of the qualifying phrase "as resources become available for the purpose" leaves the impression that broadcasting that reflects the Aboriginal cultures of Canada is of diminished importance. This detracts from the declared policy statement in section 3.(1)(*d*)(iii) of the Broadcasting Act that "the Canadian broadcasting system should reflect the special place of Aboriginal peoples within Canadian society."

As noted above, Northern and Aboriginal broadcasters identified specific problems about replacement costs, infrastructure upgrades, programming support, training, access and preservation. **The Committee is concerned, however, that the situation is much worse than witnesses indicated. For example, 11 of 96 community sites are now off the air and the actual cost of maintenance and equipment replacement is approximately $1 million more per year than available federal funds support.[15] The Committee is gravely concerned by this information and believes that there is a pressing need to address this situation as soon as possible.**

The Committee recognizes that Canada's Northern and native broadcasters make a unique contribution to Canadian culture. Furthermore, it believes that these broadcasters should be recognized for their commitment to the preservation and enhancement of Canada's Aboriginal cultures, languages and people. With this in mind, the Committee makes the following recommendations:[16]

Non-discriminatory policy

RECOMMENDATION 10.1:

The Committee recommends that section 3.(1)(*o*) of the *Broadcasting Act* be amended to read "programming that reflects the Aboriginal cultures of Canada should be provided within the Canadian broadcasting system;" This amendment would remove the qualifying phrase "as resources become available for the purpose."

Capital Costs

RECOMMENDATION 10.2:

The Committee recommends that a fund be developed by the appropriate government department to assist Northern and Aboriginal broadcasters with capital equipment replacement costs.

Funding

RECOMMENDATION 10.3:

The Committee recommends that the Northern Native Broadcast Access Program be preserved and that its funding be made stable and increased to reflect a reasonable inflationary increment.

RECOMMENDATION 10.4:

The Committee recommends that funds provided for the distribution of Northern programming (e.g., the Northern Distribution Program) adequately cover the cost of distribution.

Training

RECOMMENDATION 10.5:

The Committee recommends that the appropriate departments, in collaboration with public and private broadcasters, develop a training program for Northern and Aboriginal broadcasters.

Evaluation

RECOMMENDATION 10.6:

The Committee recommends that the Northern Native Broadcast Access Program, the Northern Distribution Program and related support measures be evaluated two years after renewed funding is made available.

Carriage

RECOMMENDATION 10.7:

The Committee recommends that the CRTC require direct-to-home satellite services to provide CBC North programming to Canada's Northern regions.

Endnotes

[1] Canadian Radio-television and Telecommunications Commission, News Release, "Northern Native Broadcasting: Improved Access for Native Broadcasters," 19 December 1985.

[2] Public Notice CRTC 1998-8.

[3] See Chapter 7 for more on APTN.

[4] Report of the Task Force on Broadcasting Policy (Caplan-Sauvageau) (Ottawa: Minister of Supply and Services Canada, 1986), p. 515.

[5] Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.

[6] Ibid.

[7] Ibid.

[8] Meeting of the Standing Committee on Canadian Heritage, 27 November 2002.

[9] Ibid.

[10] Ibid.

[11] Ibid.

[12] Ibid.

[13] Ibid.

[14] Ibid.

[15] Data provided by the Department of Canadian Heritage.

[16] Note: Specific recommendations concerning APTN are made in Chapter 7. Recommendations dealing with archival storage and preservation are made in Chapter 12. Recommendations dealing with Aboriginal funding envelopes within the Canadian Television Fund and Telefilm are made in Chapter 7.

Part 3

MAINTAINING A SINGLE SYSTEM

Chapter 11: Ownership
Chapter 12: The Digital Transition
Chapter 13: Copyright
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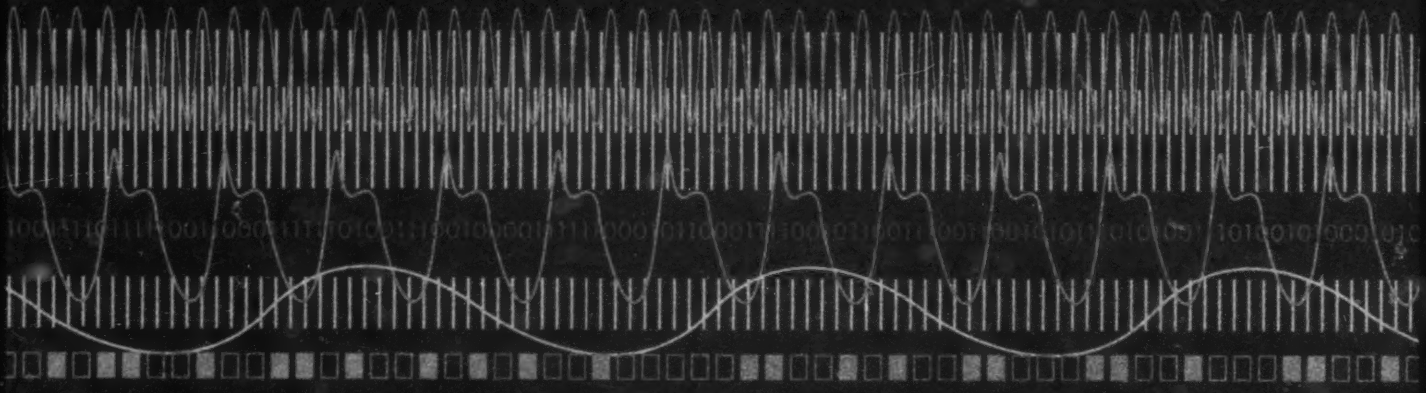


MAINTAINING A SINGLE SYSTEM

Chapter 11

Ownership

Ownership issues, and debates around ownership, have tended to focus on fundamental questions about values such as: What is the appropriate mix of public and private property in the system? What are the rights enjoyed by the owners of private broadcasting undertaking? What obligations are attached to those rights?

This chapter looks at these fundamental questions. It begins by reviewing the history of ownership concerns in Canada, current rules and the various types of media ownership that exist in Canada today, including horizontal integration, vertical integration and cross-media ownership. This is followed by a discussion of diversity and ownership. Thereafter, the merits and drawbacks of foreign ownership in the Canadian broadcasting system are discussed. Where applicable, what the Committee was told is presented and proposed solutions are offered.[1]

A. Current Ownership Rules for Canadian Broadcasters and Distributors

The philosophy of Canadian ownership and control has always been central to Canada's cultural industries. The *Broadcasting Act* of 1968 established a policy that the Canadian broadcasting system should be owned and controlled by Canadians. The purpose of this principle was "to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." To this end, Section 22(1)(*a*)(iii) of the *Broadcasting Act* (1968) stated that:

> No broadcasting licence shall be issued, amended or renewed …
> (a) in contravention of any direction of the Commission issued by the Governor-in-Council under the authority of this Act respecting…
>
> (iii) the classes of applicants to whom broadcasting licences may not be issued or to whom amendments or renewals may not be granted and any such class may, notwithstanding Section 2, be limited so as to not preclude the amendment or renewal of a broadcasting licence that is outstanding at the time this Act comes into force.

To implement this principle, the government issued Order in Council P.C. 1968-1809 on 20 September 1968, directing the CRTC to reduce the permissible foreign ownership. This Direction reduced the permissible foreign ownership of Canadian broadcasting to 20% of the voting shares. It also required all members of the Board of Directors to be Canadian citizens and limited total foreign ownership of all investment in any licenced undertaking, including debt capital and retained earnings to 60%. Holding companies were limited to one level.

A new Direction (Order in Council P.C.1969-630), issued on 27 March 1969, allowed an additional level of corporate holding companies and broadened the definition of the term "Canadian citizen" to include a personal corporation totally owned by Canadian citizens. This Direction also added cable television to the foreign ownership requirements and prohibited participation by a foreign government.

In 1970, the Special Committee of the Senate on Mass Media, chaired by Senator Keith Davey expressed concern about increased cross-ownership among the Canadian media and of media ownership by non-media conglomerates. Another concern was that large media entities in the Canadian system were not dedicating sufficient resources toward the achievement of public-policy objectives, such as Canadian television programming. That senate committee, however, did not propose limits on cross-media ownership and concentration; instead, it recommended that the *Broadcasting Act* be amended to recognize that the public interest should be protected against excessive media concentration.

The 1978 Royal Commission on Corporate Concentration, chaired by Robert B. Bryce, also studied media concentration and cross-ownership but within the context of a broader study on the implications of concentrated ownership in all sectors. The general conclusion of this report was that an ownership group could potentially take advantage of its dominant position, but that "there are no practical legislative or regulatory instruments available to deal with this problem."[2] The report also noted, that: "the CRTC has the power to control the ownership of broadcasting outlets but it is apparent that their decisions are much more heavily influenced by other considerations."[3] With this in mind, the report's authors recommended that: "the CRTC be empowered to prevent the owners of broadcasting stations from also owning newspapers and other print media that circulate in the same market."[4]

The Royal Commission on Newspapers chaired by Tom Kent, which reported in 1981, did not have the mandate to look at broadcasting, but dealt nevertheless with the question of newspaper and broadcaster cross-ownership. This report concluded that cross-ownership was a matter for concern, where cross-owned media were operating in the same market. Where common ownership was found in the same market, the Commission's authors were of the view that newspaper interests should not be permitted to own a cable outlet, radio or television station if 50% of the population who could receive these stations lived in the area where the newspaper was available.

Based on these recommendations, the government issued an Order in Council Direction on 29 July 1982, which stipulated that the CRTC may not issue or renew licences to applicants effectively controlled, directly or indirectly, by the owner of a daily newspaper "where the major circulation area of the daily newspaper substantially encompasses the major market area served or to be served by the broadcasting undertaking, unless the Commission is satisfied that refusal to do so would be contrary to overriding public interest."[5] This directive was rescinded in 1985 (Order in Council P.C. 851735) upon a change in government.

The Task Force on Broadcasting Policy chaired by Gerald Caplan and Florian Sauvageau noted in its 1986 report that Canada had no policy regarding the acceptable threshold for concentration of media ownership, and suggested that it was time to address that question. Since that time, the CRTC has revised its regulations on radio and television, to allow ownership or control of "no more than one over-the-air television station in one language in a given market,"[6] as well as three or four radio stations in one language in a given market (depending on market size). In addition:

> Where an independent producer applies (whether alone or with other partners), either to purchase an interest in, or to obtain a licence for, a broadcasting undertaking, the Commission will expect the applicant or applicants to address the issues arising from the vertical integration of a production company and a broadcaster, and propose appropriate safeguards.[7]

In other words, in the case of independent production companies, the CRTC now examines each proposed ownership transaction that comes before it, with the expectation that the applicant(s) will address issues arising from any resulting integration, and propose appropriate safeguards.

Regarding foreign ownership, as noted in Chapter 2, the *Broadcasting Act* of 1991 preserved the principle that the Canadian broadcasting system "should be a single system, effectively owned and controlled by Canadians." Apart from this recognition in the Act, the federal government's Convergence Policy Statement of 1996 suggested that telecommunications and broadcasting organizations should be treated equally. Concerning competition, it supported an update to:

> Canadian ownership rules for broadcasting licensees to encourage the investment required to accelerate the implementation of the advanced technologies and to increase Canadian content services by harmonizing the rules for the broadcasting industry with those of the telecommunications industry.[8]

That said, the Government also noted that:

> Canadian ownership rules applicable to broadcasting and telecommunications must be respected. Although the requirements for broadcasting have been substantially harmonized with those now in place for telecommunications, it is not government policy to ensure ongoing harmonization of ownership rules for broadcasters and Canadian carriers in the future.[9]

For this reason, it concluded that:

> While new technologies allow providers of telecommunications and broadcasting services to offer similar services, the distinction between telecommunications, broadcasting and their services will remain. Different policy objectives require distinct regulatory mechanisms.[10]

The Governor in Council on 8 April 1997 issued a Direction to the CRTC *(ineligibility of Non-Canadians)* requiring 80% Canadian ownership and control for all broadcast licensees and 66.6% for holding companies. This Direction also sets out additional restrictions on non-Canadian activity to maintain effective domestic control of broadcasting as follows:

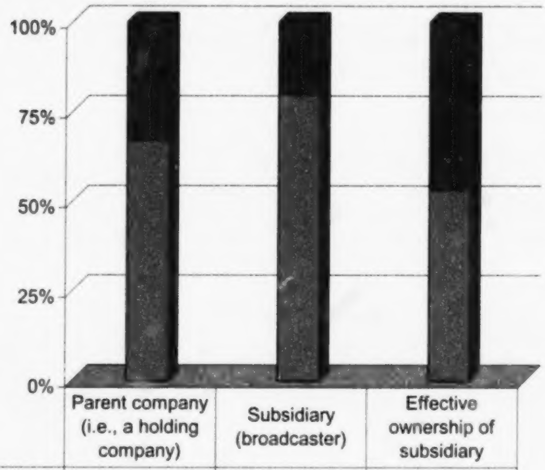
> The Canadian Radio-television and Telecommunications Commission is hereby directed that no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is a non-Canadian.

> … Where the Canadian Radio-television and Telecommunications Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to determining control, other than the beneficial ownership and control of the voting shares of a qualified successor by a Canadian carrier or its acquiring corporation, the applicant is deemed to be a non-Canadian.

The definition of Canadian is key. This may be straightforward for individuals but can be complicated for organizations.[11] Shareholders can own a company that itself owns other companies. The company that owns all or part of another company or companies is a holding company. Thus, the owners of the holding company indirectly own any companies owned by the parent company.

In terms of limiting foreign ownership and control, attention must be paid to both direct and indirect ownership. According to the federal government's 1997 Direction to the CRTC, non-Canadians may own up to 20% of a broadcaster directly and up to 33.33% of a holding company that owns a broadcaster. In effect, this allows a non-Canadian to own up to 46.7% of a Canadian broadcaster. Figure 11.1 shows how this is calculated.

Figure 11.1 Maximum allowable foreign ownership of a Canadian broadcaster



	Parent company (i.e., a holding company)	Subsidiary (broadcaster)	Effective ownership of subsidiary
■ Foreign	33.3	20	46.7
■ Canadian	67.7	80	53.3

(20% + (0.333 x 80)) = 46.7%
(0.667 x 80) = 53.3%

For large corporations whose shares are widely held, a block of voting shares less than 50% can still provide effective control of a corporation. To overcome this possibility the Direction defines control to mean:

> control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, an agreement or arrangement, the ownership of a corporation or otherwise.

If a non-Canadian has effective control, by any means, in a Canadian corporation, that corporation loses its status as a qualified corporation. Without that status the corporation may not acquire or be granted a broadcasting licence in Canada.

Surprisingly, the schedule of regulations related to the *Investment Canada Act* does not include broadcasting; it simply makes reference to a "prescribed specific type of business activity that, in the opinion of the Governor in Council, is related to Canada's cultural heritage or national identity." This omission is not of great significance, however, given the mandate for Canadian ownership and control of broadcasting that is found in the *Broadcasting Act*.[12]

The *Competition Act* in a less direct sense also deals with issues related to ownership. The Competition Bureau sets out permissible types of corporate behaviour in the marketplace. As the Commissioner of Competition noted in his 22 May 2002 appearance before the Committee:

> The Competition Act is a federal law of general application to the Canadian economy. The [A]ct governs with some exceptions, all business dealings in Canada, and contains both criminal and non-criminal provisions. …
>
> The ultimate objective is the safeguard and protection for the competition system rather than the protection of (the) individual competitor. The Competition Bureau's mandate is straightforward. We strive to ensure that Canada has a competitive market place and that all Canadians enjoy the benefits of competitive prices, product choice and quality service.[13]

B. Broadcast Media Ownership in Canada

Figure 11.2 shows the 10 largest media groups (excluding telecommunications) by revenue in Canada today: As can be seen, the revenues of these top groups — although not a consistent set — total more than $12.5 billion.

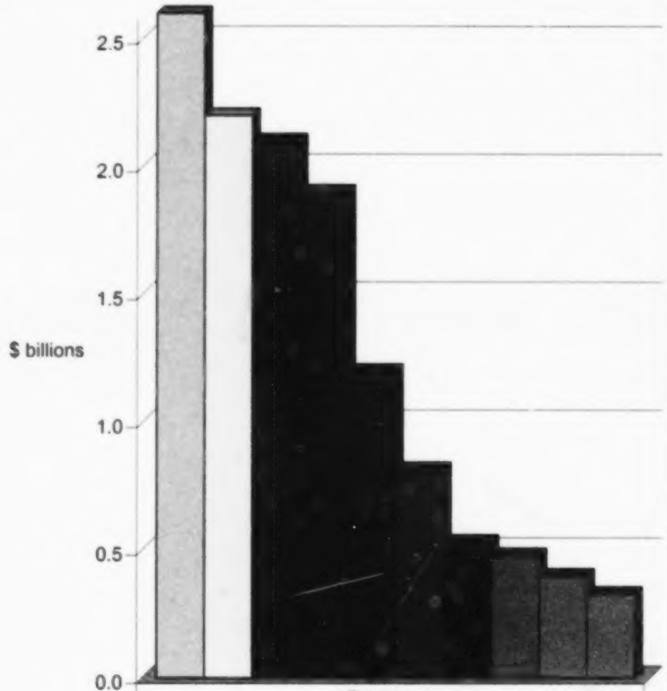
It should be pointed out, however, that these groups are — relatively speaking — not that large when compared with the world's top audiovisual companies. As the Centre d'études sur les médias points out in a paper prepared for the Committee:

> … none of these Canadian players appears in the lists of the world's top 50 audiovisual companies for 2001, as established by the European Audiovisual Observatory. That ranking is dominated by three American corporations: Time Warner, whose audiovisual revenues (films, radio and television) have reached US$19.7 billion, Viacom with US$19 billion and Walt Disney with US$18.3 billion.[14]

As can be seen, each of the world's three largest media companies has revenues that eclipse the top 10 Canadian companies combined. However, as the following citation demonstrates, ownership in Canadian broadcasting can best be characterized as an intricate and intensely interconnected set of stakeholders:

> In Canada, a … thrust towards consolidation and vertical integration has … taken place. CanWest Global, for example, has consolidated its national network of television stations. It subsequently purchased the newspaper and Internet assets of Hollinger Inc.. … CanWest Global is also vertically integrated through its acquisition of production house, Fireworks. At the same time, Bell Canada Enterprises bought both CTV Inc. and the *Globe and Mail*. CTV and the *Globe and Mail* were added to BCE's Internet service Sympatico in a newly created media holding, Bell Globemedia, which also owns, along with partner Cogeco, the French-language broadcaster TQS. On a smaller scale, Corus Entertainment, which is affiliated with the Shaw cable group, has acquired control of animation producer Nelvana. And in French Canada, Quebecor has acquired the Quebec-based TV giant Videotron, which in turn controls the TVA television network, two production houses — TVA International and JPL Productions — plus a dozen specialty channels.… As a result of these mergers and acquisitions, there is now a small cluster of powerfully vertically integrated media giants in Canada.[15]

Figure 11.2 Revenues for Canada's top ten audiovisual media groups (2001 or 2002 revenues)



	Revenues
▨ Corus Ent. / Shaw	2.6
☐ Rogers Comm.	2.2
■ CanWest Global	2.1
■ Quebecor	1.9
■ Bell Globemedia Inc.	1.2
■ Torstar	0.8
■ Cogeco	0.5
■ CHUM Limited	0.5
■ Astral Media	0.4
■ Power Corporation	0.3

Total: $12.6 billion

This particular expression of concern highlights three different types of issues about ownership in Canada: horizontal integration, vertical integration and cross-media ownership.

Horizontal integration deals with a firm taking over a similar business (e.g., a television broadcaster acquiring other television broadcasters or increasing its market share among television broadcasters). Vertical integration deals with a firm in an industry acquiring firms in other stages of the same industry (such as a television broadcaster acquiring a production company that makes television programs). Cross-media ownership deals with a firm in an industry acquiring a firm from another industry (e.g., a television broadcaster acquiring a newspaper). These various aspects of ownership are discussed below.

Before proceeding, however, it is worth noting that witnesses, in general, were of two minds about horizontal integration, vertical integration and cross-media ownership. One was that Canadian companies need to be large enough and sophisticated enough to compete in a global market. For example, Rogers Communications Inc. suggested that recent ownership changes are an ongoing process that will ensure the competitiveness of Canada's media companies on the world stage.

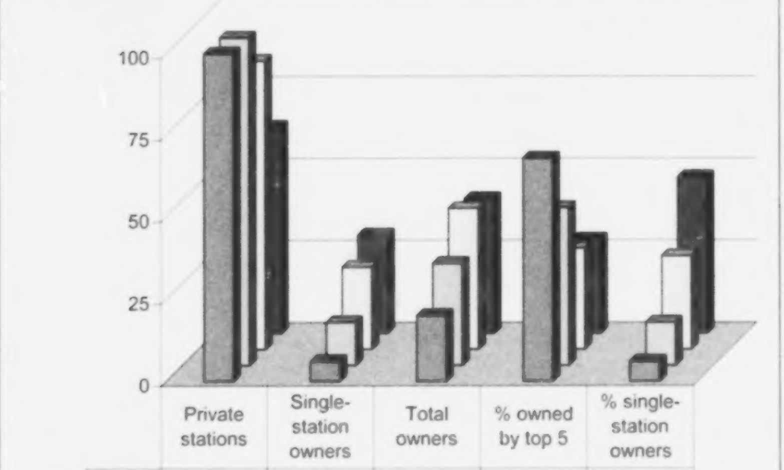
On the other hand, a variety of witnesses expressed concern that the concentration of media under a small number of ownership groups will pose a threat to the democratic process by reducing access to a diverse range of different views and opinions. Witnesses expressing this view would like to see restriction on the concentration of ownership to prevent the possibility of having just one voice in particular contexts. This particular issue, which was also raised in the Committee's panel discussions on foreign ownership, will be addressed in a separate section of this chapter.

Horizontal Integration

One trend that has long been a concern is the movement towards a horizontal integration (concentration) of ownership. Figure 11.3 shows recent trends in multi-station television ownership in Canada. It shows that top five ownership groups owned 68% of all television stations in 2000, up from 28.6% in 1970. It also shows that single-station ownership was far less common in 2000, with just six such entities.

There are similar concerns about the cable industry. In 1999, for example, the top five cable companies (Rogers, Shaw, Videotron, Cogeco and Moffat) had 80.1% of all cable subscribers. Since then, there has been even further consolidation, with Shaw acquiring Moffat's cable operations

Figure 11.3 Consolidation of private conventional television station ownership in Canada, selected years 1970-2000



	Private stations	Single-station owners	Total owners	% owned by top 5	% single-station owners
▨ 2000	100	6	20	68	6
☐ 1990	100	13	31	48	13
☐ 1980	88	25	43	30.7	28.4
■ 1970	63	30	41	28.6	47.6

in March 2001. As the president of the Canadian Cable Television Association put it before the Committee:

> To give you a perspective on the cable industry, there are six companies that serve almost 90% of the Canadian cable television customer base and over 100 companies that serve the rest of the market. These larger companies have already expanded their offering, adding digital cable and high-speed Internet service for our customers. Some of the smaller cable companies have also started to introduce advanced services, but many of them offer a more limited service due to the significant investments required to bring these advanced technologies to their remote and geographically dispersed customer base.[10]

The direct-to-home satellite market is even more concentrated than cable with two firms, ExpressVu and StarChoice. Both cable and satellite companies compete as broadcasting distributors for customers.

Vertical Integration

The CRTC has long worried about vertical integration (or concentration) that is, the simultaneous ownership of different stages in the production, broadcasting and distribution of programs. Its major concern has been that an undue preference would be given to programming from a related entity (or programming from a competitor to a related entity would face discrimination) and that this would reduce diversity of voices.

Until recently, the CRTC examined potential issues arising from the vertical integration of program producers and broadcasters on a case-by-case basis. For example, cable companies were not allowed to purchase interests, including controlling interests, in analog pay and specialty programming services. In June 2001, however, the CRTC announced that cable companies would be allowed to purchase interests, including controlling interests, in analog pay and specialty programming services. This decision allowed vertical integration. Thereafter, in August 2001, the CRTC renewed the licences of CTV and Global but stipulated that no more than 25% of their Canadian content in prime time could come from production companies they owned. This decision placed a limit on the self-dealing practices (i.e., business transactions between operations owned by the same holding company) that are possible in a vertical integrated company.

Cross-Media Ownership

The term "cross-media ownership" refers to the acquisition by an individual or a firm of assets in two or more kinds of media. The year 2000 was a milestone in the evolution of the Canadian media landscape, with a large number of such changes in ownership. For instance, BCE (a telephone company) invested in television and the newspaper industry; Rogers and Shaw (cable operators), and Quebecor (a company specializing in print media and printing) acquired assets in broadcasting; and, CanWest Global Communications (broadcasters of conventional and specialty channels) bought assets in the print media.

This trend towards cross-media ownership has led to the creation of several large media companies. Figure 11.4 provides summary information on cross-media ownership for the four most dominant players (BCE, Quebecor, Rogers, and CanWest Global) in Canada today.[17] As can be seen, Quebecor is active in every area listed in the above table. This puts it in a position of overall media dominance — at least in the province of Quebec — that is without parallel in any comparable industrialized jurisdiction.

Figure 11.4 Activities of Canada's top four cross-media ownership groups, 2003

	BCE	Quebecor	CanWest Global	Rogers
Radio	No	Yes	No	Yes
Television	Yes	Yes	Yes	Yes
Broadcast distribution	No	Yes	No	Yes
Production companies	Yes	Yes	Yes	No
Newspapers	Yes	Yes	Yes	No
Magazines	Yes	Yes	Yes	Yes
Internet	Yes	Yes	Yes	Yes
Telephony, networking	Yes	Yes	No	Yes
Wireless	Yes	Yes	No	Yes
e-commerce	Yes	Yes	No	No

Another example of a Quebec-based company with a history of cross-media ownership is Astral Media (see inset).

Conglomerates

A fourth type of ownership group is the conglomerate, that is, a business involved in activities in a number of sectors that are not directly related. The most well-known North American conglomerate with media holdings is General Electric, which also owns NBC television. Similarly, as the Centre d'études sur les médias notes:

> In Quebec, Power Corporation is an example of this type of integration. Through its Gesca subsidiary (print), the group is a major media player. It also holds interests in the financial services sector (life insurance and investment funds). Internationally, its interest in Pargesa Holding gives it significant presence in Bertelsmann, a European communications giant, but also in industrial production, energy and financial services.

Astral Media: A Family Affair

Astral Media is today one of the biggest media undertakings in Canada. Its growth and success since its modest beginnings in Montréal over 40 years ago reflect the complementary talents of the four Greenberg brothers: Harold, Harvey, Sydney and Ian, the firm's founders.

Astral's growth trajectory has been marked by the vision, imagination and tenacity of its founders. It has also been marked by major transformations, reflecting the rapid evolution of popular culture in Canada during this period.

When the Greenberg brothers set up Angreen Photo in 1961, it was a photo service concession at Miracle Mart. The first transformation took place with the acquisition of the Bellevue Photo laboratories, which enabled the brothers to go into photo processing. Shortly afterwards the purchase of Pathé-Humphries opened the door to movie production.

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Internet	Yes	Yes	Yes	Yes
Telephony, networking	Yes	Yes	No	Yes
Wireless	Yes	Yes	No	Yes
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Ownership and Diversity

The Centre d'études sur les médias notes that:

> Diversity is considered an essential component of democratic pluralism in modern society. It is the various components of the media universe which make it possible to establish a tangible link between diversity and pluralism, while reflecting the various points of view and opinion trends in society and providing access to relevant information. In return, this enables citizens to participate in public affairs in an informed manner.[19]

Furthermore:

> The concept of diversity is generally broken down into two main parts: content and sources. Content refers to the large range of opinion, information and entertainment that can meet the many needs of the various components of our complex society. Diversity of sources, on the other hand, refers to the producers, personnel and craftsmen who produce the content and to the media that broadcast them.[20]

When discussing cross-media ownership and foreign ownership, many witnesses mentioned the importance of having access to diverse content and diverse sources. A great deal of uncertainty and some fear were expressed that diversity in the media — particularly television and newspapers — is on the decline. As will be seen below, however, cross-media ownership at the local level has become a matter of concern in certain local and regional markets. As University of Ottawa Professor Marc-Françcois Bernier pointed out:

> When I talk about diversified information — I always come back to that — I do not mean that we should have 12 Internet sites with the same information: that is multiplicity and not diversity. And I will add that it is true that we have more access to international information now thanks to the Internet. However, local and regional information are still the poor cousins. More and more, concentration and convergence are such that decisions are made outside the regions, and people no longer have access to information that concerns them first and foremost; but they know what is happening in Nigeria, because someone feels that is more important. I am not saying that it is not important, but people must also have access to local and regional information, and that is something they have less and less of.[21]

By 1973 Astral was a publicly traded corporation, and in the years that followed it produced or participated in the production of some 100 films, television programs and miniseries. It also became involved in the distribution of films and television programs.

In 1983, a really major transformation was undertaken by Astral when it took control of the television networks First Choice and Premier Choix. This was a huge risk for such a young company, and proved to be a decisive turning point: Astral went into television broadcasting in a big way.

So that it could operate its First Choice and Premier Choix licences in accordance with the CRTC's regulations, Astral had to drop its production activities. However, by creating the Harold Greenberg Fund, Astral provided itself with a mechanism for giving financial assistance to Canadian screenwriters and producers. The Fund has paid out more than $25 million in this way since it was set up in 1985.

In 1990, former CRTC Chair André Bureau joined with the Greenberg family, and the gradual transformation of Astral into an undertaking entirely dedicated to media activities — television, radio and billboards — was begun. Today Astral Media is a leader in the Canadian Market of specialty and pay television channels, both French-language and English-language, in Canada. Among other things, it owns nine FM radio stations, three AM radio stations and 50% of the shares in Radiomédia. Affichage Astral Media controls about 3,400 billboards and accounts for a considerable proportion of the firm's advertising revenues, which in 2001 represented a third of Astral Media's overall revenue, or $125 millions.

Astral Media is listed on the Stock Exchange with a capital value of over a billion dollars. It employs 1,300 people.

Similarly, Ms. Anne-Marie Des Roches, Public Affairs Director, Union des artistes, noted:

> In order to contribute to cultural diversity, Canada must be a master of its own creative and broadcasting space. This challenge can only be met through a consistent regulatory strategy. We must avoid communication infrastructures that only serve as relays for the broadcasting of foreign cultural products.
>
> Controlling our own creative and broadcasting space means strengthening the balance established by the *Broadcasting Act*. The CRTC is responsible for managing the delicate balance between achieving social and cultural goals and supporting an economically solid and competitive communications industry. The balancing required is therefore closely linked to Canadian content requirements and the ownership of companies.[22]

The Centre d'études sur les médias in its report for the Committee concluded that: "Only an in-depth study can determine" whether "pluralism and diversity of information suffered as a result" of recent changes in the ownership of Canadian media companies. This is because: "Across English Canada … competition remains strong between the two networks (CTV and CanWest Global), as it does in news between TVA, TQS and Radio-Canada in Quebec." Furthermore, ownership concentration in English-language newspapers:

> …. has declined significantly since 1999, when Conrad Black's Hollinger group held more than 40% of total circulation (English and French) and nearly half of English-language circulation. The current 37% share held by CanWest, the main publisher of dailies, is only slightly greater than that of Southam in 1980 (33%).[23]

As for the French-language market, the Centre expressed some concern because: "as a result of Hollinger's sale of its three dailies to Power Corporation, two groups instead of three now account for virtually all circulation." That said:

> … the two titles in Montréal and Quebec still belong to different owners. What can also be seen is that a number of observers agree that Quebec's *Le Soleil*, for example, has vastly improved since it was transferred from Hollinger to Power Corporation. The policies of the groups are not standardized, and there is no automatic link

> between a paper's quality and its membership in a chain. Some chains engage in good journalism; others do not.[24]

With these considerations in mind, the next section briefly summarizes what witnesses had to say about diversity and ownership. Thereafter, proposed solutions are provided.

What the Committee Heard

When Mr. Alain Gourd, Executive Vice-President, Bell Globemedia, appeared before the Committee he cited a recent CRTC study on diversity in the Canadian broadcasting system which found that:

> From 1991 to 2001, both the number of stations and number of owners of television stations in key Canadian markets have risen significantly. … There has been a similar progression in the francophone market. In 1982, for example, there were basically three news services for francophone viewers. Radio-Canada, Telemetropole (TVA) and Radio-Quebec.[25]

Furthermore:

> In 2002, this figure has increased significantly. Besides TVA, which now offers LCN and Radio-Canada, which provides RDI, we now have Tele-Quebec, the new version of Radio Quebec, TQS and the French TVOntario network, TFO, by satellite, the Canal Vox community channel, Teleuniversite and le Canal Savoir, the international TV5 service and many other specialized services including Astral and Canal Vie, which all provide news in one form or another.[26]

Speaking to this same point, Mr. Ken Goldstein, Executive Vice-President and Chief Strategy Officer, CanWest Global Communications Corp., had this to say about diversity of views. He asked:

> Does cross-media ownership affect the expression of diverse opinions? No, It does not. There is nothing in the structure of cross-media ownership that has any structural impact on the expression of diverse opinions. It is a matter of corporate culture, not a matter of corporate structure.[27]

But other witnesses vehemently and passionately disagreed with this statement. Their contention was that media convergence — by its very nature — has an inevitable impact on the diversity of views and content available to citizens. As Professor Marc-François Bernier explained:

> I am particularly interested in the impact of convergence on the quality of the press and information. Convergence, or to put it another way, concentration, generally creates — and this has been borne out by several studies — a form of growing pressure to make content compatible with the businesses plans of the conglomerates.[28]

For this reason it was his belief that: "the important thing is to have a variety and diversity of journalists in the field as well as radical independence among newsrooms in order for this diversity to work."[29]

Speaking to this same point, Professor John Miller, Director of Newspaper Journalism at Ryerson University, asked the Committee:

> Are there more reporters covering the news now than there were ten years ago? I guarantee you there are not.
>
> Are their owners able to vote for you? Do they live in town or thousands of miles away? Can you talk to them on Main Street? No, you cannot. These papers are owned by six giant media companies, some with interests in television, radio, filmmaking, and the Internet.
>
> These are papers whose owners' first loyalty is not to readers but to shareholders, who view the delivery of news and information as contributing nothing to the revenue side of their ledgers, just to their overhead.
>
> That is why those media companies and their representatives have been before you seeking the widest possible rules on cross-ownership and opening up the borders to other bidders.[30]

Similarly, Mr. Wilson Southam told the Committee:

> I would urge you to remember, despite the plain promises that are made to people, that a lot of this stuff is about the nuances of climate, and climate operates in very funny ways. We'll probably never have a perfect press, but what you can do by keeping it separated in terms of local editorial independence is to at least have different biases in different places being freely expressed, which

> gives us some of the diversity that gave us national health and the Canadian Pension Plan.[31]

Witnesses also warned the Committee to be wary of claims that the Internet has increased the diversity of content and views available to Canadians. For example, Mr. Bernier suggested that the Internet "has not resulted in new original sources of information."[32] Similarly, Mr. Tom Kent observed that:

> The Internet in itself is a channel. It's not a source of content. It carries a lot of content and that's its strength. … I think all I'm saying here is that the Internet is really … it's not a bad thing, it is irrelevant to the problem we're discussing now.[33]

Other witnesses, however, did not share this perspective. Professor Matthew Fraser, for example, noted that anyone with Internet access is free to seek out content and views from across Canada and around the world. His contention was that:

> We no longer live in an era of press barons, where one British press baron can command and shape opinion, maybe in the way *The Globe and Mail* did a generation ago. We live in the 500-channel universe. The Internet has … I can go on to *Le Monde* and read *Le* Monde on the web tomorrow. I can consult with *The Guardian* in the United Kingdom … many newspapers. We have a diversity thanks to technology.[34]

Furthermore, it was his belief that there is a generational factor that is often overlooked:

> We tend to debate this issue through the optic or the prism of our own experience. … We should have people in this room who are 25 and under and ask them how they consume media. … They're on the web. They're consulting all these media organs in a very splintered way. They multi-task. They go to cnn.com. They go to cbc.ca. They might go to nationalpost.com. Or they're doing their homework while they're watching the news.[35]

Speaking to this same point, Ms. Janet Yale told the Committee:

> I think there have been some newspaper reports that talk about the concern in terms of cross-media ownership, if you will, and what that means for diversity of voices and public expression. My

> personal view is that with the Internet, we're in a completely different environment. There's just an explosion of sources of information for people today. If you look at young people in particular, they don't rely on the daily newspaper as a source of information. They think of the Internet certainly as one of their primary sources of information, and there are more sources of information on the Internet than you can count.[36]

In short, witnesses perspectives were split between those who were convinced that cross-media ownership has had, or will have, important negative consequences on the diversity of views available to citizens and those who believe that there are many more ways to obtain information for Canadians than at any time in the past. It is worth noting, however, that nearly all witnesses who spoke in favour of the existing regime were from larger media companies.

Potential Solutions

Witnesses raised a number of different, but related, problems concerning the balance between reasonable limits on media ownership — particularly cross-media ownership — and the preservation of diversity in Canadian broadcast system. This situation prompted Mr. Kirk Lapointe to tell the Committee that it will be hard pressed to find a one-size fits all solution. He explained:

> … meeting the challenge of diversity is a remarkable uphill undertaking. It's not a matter of snapping one's fingers and making it true. It's not a matter of setting numerical targets, recruiting and promoting in particular ways, and tracking progress. It's a day-by-day grinding and methodical process that involves everyone in an organization in an unthreatening way building a more sophisticated media operation.[37]

Similarly, the Centre d'études sur les médias noted that:

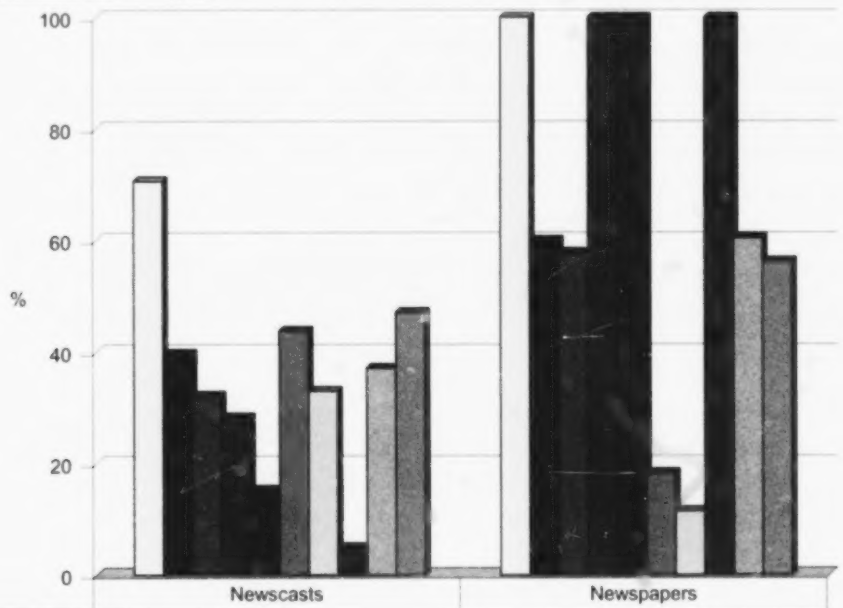
> … there will be no miracle solution to the problem of media concentration. It is through a series of measures from various sources that we will guarantee that the media discharge their social responsibility and provide the diversified, high-quality information essential to citizens and to democratic life.[38]

In this regard, the study conducted by the Centre provides some particularly useful insights. For example:

- Concentration is not as great in the broadcasting sector as it is in print media.
- Concentration of media ownership in Canada varies from one type of media to another, from region to region, across linguistic groups, and from market to market.
- Most Canadians have access to several local and national broadcasters.
- Several Canadian cities have just one local newspaper.
- At the national level, horizontal concentration has not substantially increased in recent years, except in radio.
- In newspapers, concentration has diminished since the acquisition by CanWest of the Hollinger papers, and at 37% (of English circulation), is only slightly higher than it was in 1980.
- In some regions or markets, however, concentration has increased substantially. In newspapers, for example, one group controls more than 60% of circulation in seven provinces (90% in B.C. and Saskatchewan).
- A high level of cross-media ownership is concentrated in certain cities, most notably in Vancouver where one ownership group controls 100% of the circulation of two local daily newspapers and also operates the most viewed local broadcaster.
- Quebecor's current request before the CRTC to acquire radio stations would create an unprecedented conglomerate in press, radio and television (as well as in cable) in Quebec.

Figure 11.5 summarizes the extent of cross-media ownership in nine major markets that were studied by the Centre d'études sur les médias for the Committee. As can be seen, apart from Vancouver, none of the major ownership groups exceed a 50% audience shares for their local newscasts. On the other hand, three of these markets — anglophone Montréal, Regina and Saskatoon — have just one local newspaper, and Vancouver has two local newspapers controlled by the same ownership.

Figure 11.5 Cross-ownership in nine Canadian cites by market share of local television newscasts and local newspapers



	Newscasts	Newspapers
□ Vancouver: CanWest Global	70.6	100.0
■ Edmonton: CanWest Global	39.7	60.0
■ Calgary: CanWest Global	32.2	57.8
■ Regina: CanWest Global	28.3	100.0
■ Saskatoon: CanWest Global	15.3	100.0
▨ Toronto: Bell Globemedia	43.8	18.3
□ Toronto: CanWest Global	33.0	11.5
■ Montreal (anglophone): CanWest Global	5.0	100.0
▨ Montreal (francophone): Quebecor	37.1	60.4
▨ Quebec City: Quebecor	47.1	56.2

To sum up, the Committee realizes that the question of cross-media ownership is a complex issue. Private media ownership groups are larger and more integrated than at any other time in Canadian history. The owners of media conglomerates argue that they need to be large in order to be competitive internationally and to achieve economies of scale. They are, after all, competing against global giants such as Disney, AOL-Time Warner, Bertelsmann and Viacom. On the surface at least, having big media companies with deep pockets engaged in Canadian broadcasting appears to be a positive step. They have the reach, resources and durability needed to take chances, absorb losses and promote programs.

But this argument creates a particular set of problems related to cross-media ownership.

For example, companies such as CanWest Global and Bell Globemedia do not invest as heavily in Canadian television drama as many witnesses — particularly creators — would like, and for a variety of reasons (as outlined in chapters 5 and 8) remain heavy importers of prime-time American shows. Moreover, CanWest Global's insistence on a centralized editorial policy has caused some to worry that journalists will be pressured to comply with the expectations and perspectives of the parent group that owns their respective newspapers.

As witnesses concerned about the perils of cross-media ownership told the Committee, the danger is that too much power can fall into too few hands and it is power without accountability. Ownership of multiple media outlets in the same local or national market gives corporations extraordinary power to shape the views of citizens. Under such circumstances the number and range of voices and perspectives that are available to readers and viewers can be sharply limited. The cross-promoting of one media outlet by another turns news and commentary into an advertisement or a marketing ploy. This can only have a corrosive effect on the trust that citizens place in news organizations.

There are also concerns about the effects that multitasking will have on journalists. The problem is that if newspaper reporters are expected to appear on television and radio as well as file stories for the Internet, they will have less time to devote to cover news stories.

Furthermore, the argument that Canadians now live in a multi-channel universe and have access to a wide range of online news sources, ignores an important consideration. National and local news programming still attracts millions of viewers each day and newspapers still enjoy a sizeable readership.

It is noteworthy that other jurisdictions have taken action to limit cross-media ownership. In the United States, the Federal Communications Commission has prohibited cross-ownership between press and broadcasting since the 1970s. For example, in 1975 the FCC banned television/newspaper cross-ownership for two reasons: to promote a diversity of ownership and to encourage a diversity of viewpoints in the American media. More recently, the FCC reduced these barriers, but it is doing so in a market that is highly fragmented. In France, legislation seeks to ensure that no group will be in a position to dominate more than two of the four leading media sectors (press, radio, television, cable), and applies thresholds to the allowable degree of concentration at the regional and national levels. Meanwhile, the new *Communications Act* in the United Kingdom, proposes that no person who owns a newspaper with 20% of either a national or local readership be allowed to hold a licence for either a national or regional commercial TV service. In the U.K., restrictions would also apply to newspaper owners who wish to have radio licences.

In Canada, cross-media ownership has reached unprecedented heights with the media takeovers that occurred in 2000. The problem the Committee has confronted is how to address this situation, given that is faced with the *fait accompli* of convergence, consolidation and concentration. This means making recommendations that will ensure that citizens can have access to a variety of viewpoints, without throwing the Canadian media industry into financial turmoil. This is perhaps the most delicate issue that the Committee has had to address. This is why it has carefully considered a series of options:

1) Take no action and let the issue be resolved by the marketplace. Ensure strong support for public broadcasting.

The Committee has considered whether it is necessary to recommend any action given that the market appears to be in the process of "resolving" at least some of the issues. Some corporations that were caught up in a wave of optimism during the stock market and high-tech euphoria of the late 1990s now find themselves heavily in debt and unable to find ways to make convergence work. Some financial analysts have argued that the convergence model is deeply flawed and that companies will eventually retreat to their core businesses. The argument in favour of inaction is that the situation may be very different two years from now than it is today and that government intervention should be seen as a last resort. One can argue that public policy goals would be better and more effectively served by investing in public broadcasting as a way of providing the balance that the system needs.

2) Make a strong statement about the need for journalistic independence and ask the CRTC to strengthen its policy on the separation of news rooms.

With this option, the effects of cross-media ownership can be mitigated if journalists are insulated from the pressures of convergence. Regulatory barriers can be implemented to ensure that newsrooms of newspapers will be run separately and independently from television operations. This will ensure that a variety of voices is maintained. It will also avoid taking the drastic step of ordering media corporations to sell their properties. But here the CRTC may be in a bind. It will only act if it receives complaints — but journalists and others may be too afraid to complain. This may be an instance where the proposed Canadian broadcasting monitor (see Chapter 19) could play a role.

3) Propose a "contract" between media owners and directors of editorial services.

The Committee notes that one way out of this dilemma would be to adopt a suggestion made by former Royal Commission chair Mr. Tom Kent during his testimony before the Committee. Mr. Kent repeated a proposal first made in the report of the Royal Commission on Newspapers that owners sign a "contract" with editors-in-chief to ensure that there is an arm's-length relationship between editors-in-chief and publishers and owners. The contract would cover a certain time period — five years for instance — and would give editors wide discretion over all newspaper operations including editorial policy and hiring. They could also be free in the words of the Royal Commission to "comment adversely on the views or the particular actions of any person, company or other organization associated with the proprietor."[10]

The Committee recognizes, however, that since the CRTC does not have jurisdiction over newspapers, any move to impose jurisdiction would probably provoke a major legal battle as well as a political uproar. That said, the regulator could ensure that such "contracts" would apply to television station managers. This would have the effect of distancing television operations from pressures to converge with newspapers.

4) Recommend that Canada devise a clear policy on cross-media ownership.

In this scenario, no action would be taken until new rules are formulated. As in the case of France, these rules could allow for some level of cross-media ownership to exist. A variety of solutions could be imagined. A newspaper owner might be allowed to enjoy the benefits of holding a local broadcasting licence only in cities where there were a minimum, for instance, of four other television stations. A corporation might be allowed to maintain a television licence only if it sold its majority position in the local newspaper. A minority stake could be allowed. Similarly, strict limits could be imposed on the number of broadcasting outlets and newspapers that one corporation could own. Distinctions could be made between local, regional and national markets.

5) Recommend that the CRTC be directed to not licence any broadcasting operation whose owners have a controlling interest in a daily newspaper.

Several witnesses who appeared before the Committee made this particular suggestion. Although this proposal needs further examination (e.g., it is far from clear that newspaper editorials would be influenced simply because an owner must apply to the CRTC for renewal of a broadcast licence) it is certainly appealing. As noted above, the CRTC received such a directive from government during the early 1980s. Its subsequent repeal may have been unwise. The difficulty now would be the impact that such a regulation would have on the industries concerned.

6) The outright prohibition of cross-media ownership

The Committee recognizes that this option is the most drastic. Presumably radio, television and broadcasting distribution undertakings would have to divest themselves of newspaper properties or risk not having their licences approved when they came up for renewal. The effects on Quebecor and CanWest Global in particular would be substantial. Many of the major newspapers in the country would all be for sale at the same time. It is not clear who the prospective buyers might be or whether such a step would lead to less rather than more newspaper competition. Such a recommendation, however, would be a clear message to the government, the CRTC and corporate owners.

Proposed Solutions

The Committee notes that two committees of the Quebec National Assembly, La commission de la culture and Le comité conseil sur la qualité et la diversité de l'information have released reports on media concentration in recent years. The Committee recognizes the important work of these committees and notes that before dissolution of the National Assembly in March 2003, that the government of Quebec announced its intention to introduce legislation to enhance media diversity in a context of concentrated ownership.

Thus, the Committee makes two recommendations on editorial independence and on cross-media ownership.

Editorial Independence

The Committee believes that the many challenges of cross-media ownership must be addressed to defend journalistic independence. The Committee therefore makes the following recommendations, which it believes are required to deal with the current situation, seek to correct it, and look to the future.

The Committee realizes that this is a daunting task as it implies numerous contingencies and particular circumstances. It would be tempting to propose, for example, that the CRTC be directed to refuse broadcast licences to applicants who control a Canadian daily newspaper. But should this apply only to cross-media ownership in the same local market? What about national networks and national newspapers? Who would be able to buy the properties of which certain owners may find themselves obliged to divest?

Unfortunately, the Committee does not have enough information at this stage to properly allow for all contingencies. That being said, the Committee is in a position to make a strong statement and propose a number of immediate measures. Therefore, and despite the fact newspapers are outside the mandate of this Committee — and are not subject to regulation — the Committee is of the view that action must be taken to protect the integrity of editorial independence and journalistic freedom. Therefore, **the Committee strongly denounces any attempt to stifle editorial independence and journalistic freedom**. Furthermore:

RECOMMENDATION 11.1:

The Committee recommends that the CRTC be directed to strengthen its policies on the separation of newsroom activities in cross-media ownership situations to ensure that editorial independence is upheld.

But for this to be effective, the Committee also believes that an oversight mechanism is necessary. For this reason, the Committee believes that the Canadian broadcasting monitor, proposed in Chapter 19, could play a role. Accordingly:

RECOMMENDATION 11.2:

The Committee recommends that the CRTC put in place a mechanism to ensure the editorial independence of broadcasting operations. A report to Parliament should be made by an appropriate authority (e.g., the Canadian broadcasting monitor) on an annual basis.

The Committee also agrees with the Centre d'études sur les médias that elected officials have a role to play. As the Centre wrote in its report prepared for the Committee:

> We believe the onus is on elected representatives to take action in this field. There are major limits to the case-by-case approach. Decisions depend on specific situations and the players involved. On the other hand, the legislative approach makes it possible to develop a conceptual framework and allows for a certain continuity in rules, which should not change abruptly in response to business plans.[40]

The Centre further suggests that:

> Every Canadian mechanism designed to govern media ownership should therefore take the language aspect into consideration and include rules designed to maintain ownership diversity, first, at the local level, but also at the national level, to ensure diversity of national information sources.[41]

And, that:

> … any mechanism designed to regulate cross-ownership would do well to take the groups' spheres of influence into consideration by examining all the media outlets they own or wish to acquire.[42]

In addition to ownership regulations, the Centre notes that measures could be adopted to improve competition. Financial assistance could be provided to local media who make a vital contribution to their community. Support could be provided to media, which add to the range of diversity in information and opinion. The CBC is, of course, the first among these and any move toward resolving its chronic funding difficulties (along the lines of those recommended in Chapter 6) would help.

Cross-Media Ownership

The Committee is of the view that the potential problems with cross-media ownership are sufficiently severe that the time has come for the federal government to issue a clear and unequivocal policy on this matter. The Committee's principal recommendation on this issue is that the government direct the CRTC to postpone the awarding or renewal of broadcasting licences involving cross-media ownership pending the publication of such a policy. This should be done within one year of the tabling of the Committee's report.

RECOMMENDATION 11.3:

The Committee recommends that the Government of Canada issue a clear and unequivocal policy statement concerning cross-media ownership before 30 June 2004.

Furthermore:

RECOMMENDATION 11.4:

Until the Government of Canada declares its policy on cross-media ownership, the Committee recommends that:

(a) The CRTC be directed to postpone all decisions concerning the awarding of new broadcast licences in cases where cross-media ownership is involved.

(b) Existing licence renewals that involve cross-media ownership be automatically extended (i.e., an administrative renewal) for a minimum of two years and a maximum of three years.

C. Foreign Ownership

Canada, at least in terms of population and the size of its economy, is relatively small compared to those countries with which it has historically had political and geographic links. Canada has availed itself of foreign capital to aid its growth, but it has had concerns throughout its existence about the effects of capital flows — and strong economic links with other, larger countries — on its sovereignty and distinctiveness.

The United States, because of its geographic proximity, has always been a concern for some Canadian policy-makers. In the elections of 1887 and 1891, for example, Sir John A. MacDonald was able to tap feelings of Canadian nationalism and a distrust of the U.S. to win elections. During this period, it was the United Kingdom that provided the bulk of foreign investment in Canada. This investment was predominantly portfolio investment rather than direct investment; that is, investment in bonds rather than equity, which entails some control in an enterprise.

By the 1950s, the U.S. was the leading source of foreign investment in Canada, particularly equity investment. Concerns about losing control of our economy led to several studies, such as the Watkins Report in 1968 and the Gray Report in 1972, both of which examined the costs of the large flows of foreign investment. These studies, in turn, led to legislation to screen foreign investment to ensure benefits would outweigh costs. These included the *Foreign Investment Review Act* (FIRA) of 1973, which was replaced by the less restrictive *Investment Canada Act* in 1985.

Both FIRA and the *Investment Canada Act* were broad-based, dealing with foreign investment in general. Some sectors, such as banking, were considered especially susceptible to having high costs from foreign investment and control. These sectors had specific restrictions on foreign investment. Not surprisingly, cultural industries have long had such specific restrictions.

Since the mid-1960s technical developments and regulatory changes have led to increased competition in telecommunications. This, in turn, has led to some questioning of the restrictions on foreign ownership in both the telecommunications and broadcasting sectors.

What the Committee Heard

Witnesses raised several issues concerning foreign ownership. The first was whether the current restrictions should be retained or loosened. The second had to do with the coverage of any changes. Should ownership restrictions be relaxed for both content providers and carriers? If the components are treated differently, what should the differences be? A final issue, related to the first, was how Canadian broadcasting policies, particularly Canadian content policies, could be maintained with foreign ownership.

Discussions of foreign ownership before the Committee were at times heated, with fairly clear differences among those who appeared. In general, the unions, creators and supporters of public broadcasting opposed changes to the foreign ownership restrictions. Some broadcasters and distributors favoured continued Canadian control in the industry, but thought that the current restrictions might be relaxed to allow up to 49% foreign ownership.

The Minister of Canadian Heritage told the Committee that it was the policy objectives of the *Broadcasting Act*, not the associated regulations that are important. She said:

> The intent of the foreign ownership requirements is to ensure a diversity of voices. If these objectives can be achieved in another way, I don't think we should preordain that review, but I think you should be reviewing that.[43]

One of the strongest statements on the need to maintain limits on the foreign ownership of broadcasting in Canada was made by Ms. Joie Warnock of the Communications, Energy and Paperworkers Union of Canada. She said:

> On foreign ownership, the very fact the foreign ownership issue is being considered in the context of the Canadian broadcast system is evidence of the extent to which our public agenda is being controlled by the forces of globalization.
>
> … The direction indicated by the very few who advocate elimination of foreign ownership restrictions runs contrary to the fundamental goals of the current *Broadcasting Act*. We must protect our sovereignty in one of the few remaining bastions of Canadian identity.[44]

Those arguing for a loosening of foreign ownership restrictions included AOL-Time-Warner and the Canadian cable companies. The latter group emphasized the distinction between content providers (broadcasters) and carriers (the BDUs), and argued that the restrictions should continue for the former and be relaxed for the latter. AOL-Time-Warner (with AOL Canada) made its case for relaxing ownership restrictions in its brief and in its appearance before the Committee:

> The Canadian government and the CRTC have recognized that Canadian companies need to be strong and well financed to compete in an increasingly global broadcasting market. The broadcasting and media industries continue to experience consolidation. Canada is no exception. Foreign investment is required to ensure Canadians continue to have access to a wide diversity of views.[45]

The Canadian Association of Broadcasters, however, argued in favour of Canadian control of broadcasting but suggested that this could allow the relaxing of current restrictions to allow for up to 49% foreign ownership:

> Our members have a variety of approaches to the topic of foreign ownership, as you know, and that's due largely to their corporate strategies, their structures international development strategies and so on.
>
> At this point in time there is consensus on majority Canadian control with views on foreign ownership levels ranging from the status quo to an unrestricted 49% of ownership tied to a reciprocal liberalization of similar rules in other countries.[46]

At least one broadcaster, however, saw a relaxation to 49% for foreign ownership as just the first step to getting more capital for the industry.

The ultimate position could be 100% foreign ownership, a position that would not upset the broadcaster if Canadian content requirements stayed in place and were applicable to all broadcasters. As Mr. Leonard Asper of CanWest Global Communications told the Committee:

> We're saying for content companies, as a practical measure in a first step, go to 49 percent. Keep the content rules, make sure you get reciprocity for it so that we can expand it to their markets and have broader outlets over which to amortize Canadian programming, for example.
>
> We also say that a second step could be to go to 100 percent. It doesn't matter, as long as there's content regulation underneath it.[47]

Another reason given for relaxing ownership rules was the increased cost of investment in Canadian capital: either in the form of debt or equity investments. This is often referred to as the cost of capital. Indeed, current limits on foreign ownership in the broadcasting sector in the U.S. and other countries can strain or limit the ability of Canadian companies to forge those strategic partnerships. As Mr. Geoffrey Elliot of CanWest Global Communications explained:

> Strategic partnerships require a sufficient level of investment to ensure participation in the management and strategic direction of an asset as opposed to possible portfolio investments that the current lower foreign investment limits usually imply.[48]

Mr. Elliot went on to argue that the complete elimination of the rules — although not objectionable to CanWest Global — was not required and that Canada should only make changes to its rules if similar changes were, in parallel, made in other countries.

A related argument was put forward by Professor Matthew Fraser who argued that the cross-subsidy model in Canadian broadcasting — foreign ownership restrictions that allow Canadian broadcasters to profit from showing U.S. programs so they will produce and show loss-making Canadian programs — does not really work and is, in some respects, paradoxical. As he suggested:

> I would argue that in Canada, we have to conceive of the Canadian market in a different way and realize that Canada is now part of a continental market. The distinction between Canada and its

> regulatory system and the United States as a different territory no longer is valid.[49]

One of the main economic arguments for allowing foreign ownership is that it would lower the cost of capital for Canadian firms. This argument came up several times. If foreign ownership restrictions were lessened or eliminated, the cost of capital would fall for incumbent broadcasters or, put another way, the value of their assets could rise, which would also increase their stock values. An important but difficult question is how much would the cost of capital fall if ownership restrictions were removed?

One attempt to sketch an answer to this question was given by a senior vice-president with Rogers Communications Inc., Mr. Dean MacDonald, who appeared before the Committee with the Canadian Cable Television Association:

> The intense infrastructure expenditures required to maintain our competitive edge are the biggest challenge our industry now faces. It is imperative that avenues be open to gaining access to the capital needed to continually invest in the latest technology and maintain our position as a world leader in communications, and not just our industry's, but also our country's leadership role.[50]

He went on to note that:

> … cable companies' customers in the U.S., on average, are valued at approximately $2,000 more than the Canadian companies. With higher valuations comes a greater ability to leverage capital investments, obviously. Canadian cable companies are at a severe disadvantage relative to those in the U.S. So in order to keep making infrastructure investments, we need access to capital on more favourable terms.[51]

However, as Mr. Richard Paradis, President, Canadian Association of Film Distributors and Exporters, explained:

> I would like to highlight the weak credibility of the argument whereby Canadian companies desperately need an injection of foreign capital to ensure their growth. This would not occur without Canadian ownership restrictions being dropped. In the last few years, a significant number of major transactions have occurred in the Canadian communication, broadcasting and media sectors in

> general. Nevertheless, every Canadian company involved in these transactions has easily managed to raise capital, which amounted to billions of dollars. Further, the majority of these companies raised this money entirely in Canada without needing to look for foreign investment, which is authorized to a maximum of 33.33% for parent companies and 20% for licence holders.[52]

Another example of this view can be found in a newspaper interview with the newly appointed chairman of the CRTC, Mr. Charles Dalfen, in July 2002. Mr. Dalfen suggested that the foreign ownership rules in telecommunications and broadcasting do not need to be changed given that the current restrictions do not limit growth in these sectors. He argued:

> I've worked a lot of these files in the private sector. I have rarely if ever seen deals that didn't succeed because there was a lack of foreign capital. They were business-plan driven, and to the extent that the business plan made sense, capital was available.[53]

As mentioned, the cable companies drew the distinction between foreign ownership restrictions for carriers and restrictions for content providers. In line with this distinction comes the argument that it is the content providers who have a protective responsibility for Canadian culture and, because of this position, the foreign ownership restrictions should be retained for them. Carriers, who simply carry whatever channels or programming is approved, do not need these restrictions. Many witnesses accepted the feasibility of having different restrictions for the two segments of the broadcasting industry. For example the Alberta Motion Picture Industries Association observed that:

> … if it's distribution it's on one side of that line … Canadian ownership is not the issue; if it's about broadcasting undertakings, clearly it has to be majority owned and controlled by Canadians.
>
> If a company had both, they would have to split it into two parts, and only the distribution holding could hold higher foreign investors. The broadcasting undertaking would still have to be majority and effectively controlled by Canadians. I think that split makes some sense. Who owns the wires and how it gets there doesn't really matter; it's what's on it. But we have to make sure that doesn't slip into them owning the content in some way. As long as it doesn't, we're okay.[54]

But BCE, which owns conventional broadcasters, specialty channels and the satellite distributor Bell ExpressVu, disagreed and argued for the retention of foreign ownership restrictions for both parts of the Canadian broadcasting industry:

> BCE believes that the need is still there for Canadians to control broadcasting enterprises, both programming and distribution. It has been a fundamental and long-standing policy in this country that the Canadian broadcasting system be effectively owned and controlled by Canadians. …
>
> BCE also believes that cable television undertakings, like satellite television undertakings, are properly characterized as "broadcasting undertakings" under the *Broadcasting Act*, rather than as "carrier undertakings". There's a fundamental distinction between the two activities.
>
> … we operate broadcast distribution undertakings competing with cable and the wire-line service. … we realize we make choices that are not like those of a common carrier. We make choices that actually have a big influence on what Canadians get to see and hear.
>
> We recognize that if those choices were made in New York or Los Angeles, it's far more likely those people would deal with people they're used to dealing with and whom they have gotten to know socially. They owe them a favour or want a favour from them or they've done business with them. It's quite possible that the Canadian coming out of St. John's, Toronto, or Vancouver wouldn't even get in the door to present a proposal for a specialty channel.[33]

An important consideration in the debate on foreign ownership is whether Canadian broadcasting policies, especially Canadian content requirements, could be retained and enforced in a Canadian system dominated by foreign owners. The Canadian Cable Television Association (CCTA) argued that any Canadian laws or regulations would still have full effect. The president of the CCTA, Ms. Janet Yale, argued that it was alarmist to suggest that foreign-owned firms would ignore Canadian policies:

> The analogy I like to draw is to all kinds of other multinational organizations that choose to operate in Canada or other jurisdictions around the world. No one suggests that when General Motors sets up a car plant in Canada they're going to be less likely to comply with the laws of the land, whether it's taxation or

> employment issues or environmental issues, or whatever. The fact of the matter is that the price of entry is compliance with the laws of the land.
>
> I think the same is true for cable as a distribution undertaking. We are companies that carry programming, and those carriage requirements are established by the CRTC. Why would anyone think a company that happens to be owned by someone other than a Canadian would not comply with the laws of the land with respect to carriage rules any more or less than they would comply with other laws of the land? I think when we talk about Canadian content we really have to think about it as a case where in the cable industry we are distributors of programming, and whoever owns those undertakings will comply with the laws of the land in terms of the carriage requirements.
>
> Having said that, we draw a very clear distinction between carriage businesses and content businesses. On the content side of the line, we support the idea that those content undertakings should be Canadian-owned and controlled.[56]

Mr. Peter Murdoch of the Communications, Energy and Paperworkers Union of Canada, however, warned that moving head office responsibilities outside Canada would eventually lead to weakened Canadian policies in broadcasting:

> The movement of head offices alone to outside our national border means decision-making, research, response to cultural policies, broadcasting management expertise, and a host of other head office functions now homed in Canada would be lost.[57]

A Canadian Heritage official also acknowledged possible problems that could arise with foreign ownership in broadcasting, but saw them as challenges, and, like his minister, remained open-minded on the issue:

> There are all kinds of distribution regulations designed to manage the impact of cultural policy. For example, broadcasters must include the [A]boriginal channel in their line-up. They must include channels in the minority official language, and there are other rules. It is difficult enough to regulate Canadian broadcasters. Regulating foreign broadcasters, and imposing the same conditions on them, will very likely present a whole new challenge, but as the [M]inister said, what counts at the end of the day is how those broadcasters act. What do they actually do? I believe she said that, if there were

> other models available or other ways of doing things, we would clearly have a responsibility to explore them.”

Proposed Solutions

While American conglomerates such as AOL-Time-Warner and larger cable and telecom operators such as Rogers would like to see foreign ownership limits either raised or lifted entirely, the Committee is of the view that one wrong move could do irreparable harm to the Canadian system. Once this happens, there will be no turning back. For this reason, the Committee believes that the suggestion that ownership restrictions can be lifted in the telecommunications sector without a serious impact on broadcasting content is seriously flawed.

Moreover, with the exception of large distribution undertakings and a few witnesses speaking as individuals, testimony on this question was virtually unanimous in favour of maintaining Canadian control. It is important to underscore the fact that Canada is in an absolutely unique position with respect to its proximity — both cultural and geographic — to the world's leading producers of broadcasting content. It is reasonable to assume that Canadian broadcasting companies would make an enticing target for takeover and integration into the North American media market, and that the policy apparatus that has been put in place to ensure a Canadian presence on the air would soon come under attack.

The Committee therefore believes strongly that the rules on foreign ownership should be maintained at current levels, as they are sufficiently high to promote an influx of foreign capital without relinquishing Canadian control. Investors are interested in placing their funds in viable businesses, not necessarily operating them. Current rules allow for up to 46.7% foreign ownership in the case of a holding company, which owns broadcasting or telecom operations (such as Rogers or BCE). This limit has yet to be reached in any significant cases. In short, there is already room for new foreign investment capital while holding the line on majority Canadian ownership and Canadian control.

The Committee notes that in parallel with its own study, the Standing Committee on Industry tabled a study on foreign ownership in the telecommunications sector on 28 April 2003. Its main recommendation is that:

> ... the Government of Canada prepare all necessary legislative changes to entirely remove the existing minimum Canadian ownership requirements, including the requirement of Canadian control, applicable to telecommunications common carriers."[59]

The Industry Committee also recommends that any changes to telecommunication carriers "be applied equally to broadcast distribution undertakings."[60]

The Heritage Committee strongly disagrees with the recommendations on foreign ownership made by the Industry Committee. The main arguments presented in the Industry Committee's report are economic. It argues that freer access to foreign investment will allow for more competition in the telecommunications sector and that this will benefit consumers. As Mr. Michael MacMillan, Chairman and Chief Executive Officer, Alliance Atlantis Communications Inc., told the Committee, ownership in broadcasting:

> ... has an importance well beyond most commodities. It's not a commodity, it's a cultural influence, and that's why we are here to talk about it and not about cups and saucers and pens and pencils. Ownership has a great deal of influence, I believe, over what is produced and why.[61]

The Committee agrees with this perspective and sees the Industry Committee's recommendations to be an extremely simplistic approach to a complex set of issues. In particular, its report ignores the many public policy and cultural issues that are at the heart of the matter. As the first section of this chapter explains, there are important issues about media ownership in Canada that can hardly be considered trivial. For example, in a discussion on the impact of vertical integration on Canadian journalism, Mr. Marc-François Bernier noted that:

> The culture of journalism also has numerous flaws and failings, particularly when it comes to its lack of rigour or equity ... So we can't blame everything on convergence and concentration, but these phenomena are being added to the risk that exists already or which is weighing down on the quality of information.[62]

Therefore, "One scenario that we should consider is that, in the long term, [media concentration] will hurt the social legitimacy of journalism and its credibility."[63]

As for any relaxation of foreign ownership rules, this committee has several concerns. For example, if one is worried about concentration of media within Canadian controlled companies, it follows that one must, by extension, be concerned by any excessive concentration of Canadian media assets in foreign hands. As Ms. Anne-Marie Des Roches told the Committee:

> This is a slippery slope and a blatant danger. If we open the door for telephony, I believe, that within about seven years, in other words the length of time that the CRTC licence lasts, everything will be out of our control. It should be noted that the pressure does not just stem from foreign capital; it also stems from all the free trade agreements on which no firm commitment has yet been made.[64]

Moreover, if ownership rules were changed, could Canada's creators be guaranteed the same access to the Canadian market they now enjoy? Furthermore, how would existing subsidy programs work if Canadian-controlled firms were no longer operating national networks in Canada? Would existing successes, for example, with French-language programming continue? As Mr. Alain Gourd told the Committee:

> With regard to TV programming … [l]et's say that the content acquisition policy were decided in Los Angeles: would it be easier to sell French-Canadian content in Los Angeles or in Montréal? Some might take refuge behind the CRTC regulation, which states that there must be a minimum of 60% in the grid and 50% in prime time… If TVA and TQS were suddenly controlled by foreign English-language interests, such as a company in the U.S., the U.S. owners might well be tempted to reduce Quebec's content to its very minimum and fill the slots with U.S. products dubbed into French. I think that is what would happen.[65]

As for the English-language market, Mr. Bernard Courtois, described the following hypothetical scenario:

> Take diversity of voices in Canada when you're talking about content and markets. If Time Warner Cable buys a Canadian cable operation, AT&T Broadband buys a Canadian cable operation, or CBS, NBC, and ABC operate in Canada, you're going to have a North American market. There are significant economies of scale in this business, and you're not going to have as many diverse sources of information. When you talk about diversity of voices, you're talking about different sources.[66]

Similarly, Ms. Megan Williams, National Director, Canadian Conference of the Arts told the Committee that:

> … while some might argue that it's not important who makes a program or who broadcasts it as long as it meets Canadian content requirements, we beg to differ. … The artistic choices made in the creation of an individual recording, feature film, or radio or television documentary or dramas are of course affected by influences from around the world, but they are filtered through the sensibilities of Canada artists and producers. Similarly, the creation of a program schedule should be based on appealing to Canadian audiences not as an afterthought to an international schedule, but as the primary focus.[67]

An additional problem is that if the ownership rules are opened fully to foreign investment, it would require wholesale changes to Canada's regulatory agencies and support measures, because as Professor Matthew Fraser reminded the Committee, unlike the United States where:

> … the Department of Justice and anti-trust officials are extremely aggressive about policing market failures such as vertical integration or undue market dominance. In Canada … we don't have the same tradition. We don't have the same institutional vigour. We don't have the same kinds of statutes that give our institutions the same kind of legitimacy to go after market failures.[68]

Therefore, given what was heard during the study of the Canadian broadcasting system about corporate and technological convergence, the Committee remains convinced that any relaxation of the existing foreign ownership rules in broadcasting or telecommunications could have an adverse effect on the Canadian broadcasting system. For this reason:

RECOMMENDATION 11.5:

The Committee recommends that the existing foreign ownership limits for broadcasting and telecommunications be maintained at current levels.

Endnotes

[1] As part of its study of the Canadian broadcasting system the Committee held a special set of panels on cross-media and foreign ownership in fall 2002. See Appendix 12 for the terms of reference used for these hearings.

[2] Cited in the Report of the Task Force on Broadcasting Policy (Caplan-Sauvageau), (Ottawa: Minister of Supply and Services Canada, 1986), p. 643.

[3] Ibid.

[4] Ibid.

[5] Ibid, p.634.

[6] Public Notice CRTC 1999-97.

[7] Ibid.

[8] Government of Canada, "Convergence Policy Statement," 6 August 1996, www.strategis.ic.g.ca.

[9] Ibid.

[10] Ibid.

[11] Section 1 of the Direction provides the relevant definitions. In short, a corporation must be a "qualified corporation" to count as Canadian. Appendix 13 provides the full text of this Direction.

[12] A minor qualification to the exclusion of non-Canadians from holding a broadcasting licence is worth mentioning. There are two telecommunications companies (BC Tel and Quebec-Telephone) with long-standing foreign ownership of more than 50% of their common shares. The *Telecommunications Act* recognizes their special status, and these companies were grandfathered under the Canadian ownership requirements accordingly. Moreover, the 1997 Direction to the CRTC (Ineligibility of Non-Canadians) included a definition for "qualified successor," which had the effect of carrying the special status of the two telecommunications companies to broadcasting. A Canadian cable company challenged this element of the Direction in court. The decision in *Rogers Communications Inc. v. Canada (Attorney General)* (1998) 145 F.T.R. 79 (F.C.T.D.) drew the distinction between individual undertakings in broadcasting and the broadcasting system as a whole: "Having two companies not 'effectively owned and controlled by Canadians' out of thousands involved in the industry does not alter the Canadian character and control of the system as a whole."

[13] Konrad von Finckenstein, Meeting of the Standing Committee on Canadian Heritage, 22 May 2002.

[14] Centre d'études sur les médias, *Media Ownership in Canada*, Prepared for the Standing Committee on Canadian Heritage, p. 9.

[15] Canadian Film and Television Production Association, *Profile 2002: Canadian Independent Production – The Challenges of Uncertainty*, February 2002, p. 4-5.

[16] Janet Yale, Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[17] This table shows the situation on 23 October 2002. The information may have since changed. Appendix 14 provides a more detailed table that summarizes the assets of these groups.

[18] Centre d'études sur les médias, p. 6.

[19] Ibid, p. 7.

[20] Ibid.

[21] Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

[22] Meeting of the Standing Committee on Canadian Heritage, 3 December 2002.

[23] Centre d'études sur les médias, p. 95.

[24] Ibid.

[25] Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Ibid.

[30] Meeting of the Standing Committee on Canadian Heritage, 5 December 2002.

[31] Ibid.

[32] Ibid.

[33] Ibid.

[34] Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

[35] Ibid.

[36] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[37] Meeting of the Standing Committee on Canadian Heritage, 21 November 2002.

[38] Centre d'études sur les médias, p. 112.

[39] Report of the Royal Commission on Newspapers (Kent Commission) (Hull: Canadian Government Publishing Centre, 1981).

[40] Centre d'études sur les médias, p. 104.

[41] Ibid, p. 106.

[42] Ibid.

[43] Meeting of the Standing Committee on Canadian Heritage, 8 November 2001.

[44] Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[45] Casey Anderson, AOL Time Warner/AOL Canada, Meeting of the Standing Committee on Canadian Heritage, 12 March 2002.

[46] Glenn O'Farrell, President, Canadian Association of Broadcasters, Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[47] Meeting of the Standing Committee on Canadian Heritage, 1 March 2002.

[48] Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

[49] Ibid.

[50] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[51] Ibid.

[52] Meeting of the Standing Committee on Canadian Heritage, 16 April 2002.

[53] Ian Jack, "Foreign Ownership Rules Don't Need Review: Dalfen," *The National Post*, 29 July 2002.

[54] Nic Wry, Meeting of the Standing Committee on Canadian Heritage, 27 February 2002.

[55] Bernard Courtois, Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

[56] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[57] Meeting of the Standing Committee on Canadian Heritage, 25 February 2002

[58] Michael Wernick, Meeting of the Standing Committee on Canadian Heritage, 20 November 2002.

[59] *Opening Canadian Communications to the World*, Report of the Standing Committee on Industry, Science and Technology (Ottawa: House of Commons, 2003), p. 37.

[60] Ibid, p. 52.

[61] Meeting of the Standing Committee on Canadian Heritage, 4 December 2002.

[62] Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

[63] Ibid.

[64] Meeting of the Standing Committee on Canadian Heritage, 3 December 2002.

[65] Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

[66] Ibid.

[67] Meeting of the Standing Committee on Canadian Heritage, 10 December 2002.

[68] Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

MAINTAINING A SINGLE SYSTEM

Chapter 12

The Digital Transition

> **There is no better way to illustrate the dramatic transformation in the broadcasting industry than to look back at where we were in 1991 when the Broadcasting Act came into force. Then there were only 14 Canadian specialty services and four pay services, all on analog. There were no licenced competitors to cable, digital set-top boxes were years away, and no one had heard of the Internet.**
>
> **A decade later competition is flourishing in broadcast distribution and among programming services. ... satellite distributors in Canada now account for 1.7 million of the total 2.8 million, or over 60%, of all digital television customers. In addition, hundreds of digital services have been licenced and interactive television is becoming a reality. The Internet is a powerful presence in our lives and the average Canadian spends 12 hours a week online.**
>
> ***Janet Yale, President and Chief Executive Officer, Canadian Cable Television Association, Meeting of the Standing Committee on Canadian Heritage, 19 February 2002***

Canadian broadcasters and distributors have had to cope with serious challenges over the past two decades due to the introduction of new programming services and the dynamics of audience fragmentation. In the years to come, these challenges will be amplified by the digital revolution; that is, the transition from analog to digital technologies.

There is hardly an aspect of human life in developed countries that has not been affected by the introduction and uses of digital technologies. One need only think of the development of personal computers, the Internet, geographical positioning systems, telemedicine, distance education, just-in-time inventory systems, robotics, remote imagining systems, and the personal video recorder as a few examples of services that did not exist 40 years ago.

Broadcasting has not been — and cannot possibly be — immune to the impact of the digital revolution. The most notable example of this has been the introduction of DTH satellite services. On the one hand, Canadians, no matter how remotely located, can now enjoy access to the same services Canadians receive in larger cities. On the other hand, this new reality has created difficulties for some, particularly for those interested in community, local and regional expression.[1]

But the delivery of television via satellite is just one of the many examples of how digital technologies can be and will be used. The Canadian Association of Broadcasters (CAB), in its brief to the Committee described this ongoing process as "the digital transition," and argued that the "Canadian broadcasting system is … at the threshold of the single biggest evolution in its history."[2]

This evolution will continue over the next 10 to 20 years and will place incredible strains on the Canadian broadcasting system. There are a number of reasons for this. Two of the most important are the cost of the transition and the challenges it will place on the governance of the system (i.e., the system of policies, regulations, programs and accountability mechanisms that are put in place). This chapter describes and discusses these challenges and makes a number of recommendations that the Committee believes will help with this transition.

A. Background

On 29 October 1995, the CRTC released its policy to govern the introduction of digital radio. Seven years later, on 12 June 2002, the Commission announced a licencing policy to oversee the transition from analog to digital, over-the-air broadcasting. Soon thereafter, on 16 August 2002, the Commission issued a call for comments on the establishment of rules for specialty services on fully digital cable undertakings.[3]

With these various declarations (and others), the CRTC has set in motion Canada's transition from analog to digital broadcasting. Many witnesses told the Committee that we are entering a transitional period during which new digital devices and services will be competing with each other for audience and industry approval. In the coming years, the most significant of these transitions will be:

- Radio: the move from analog (AM and FM) to Digital Audio Broadcasting (DAB);

- Television: the move from analog to over-the-air digital terrestrial television (DTV), including HDTV;

- Specialty and pay services: the launch of dozens of new digital channels; the deployment of interactive programming; and the prospect of migrating existing analog channels to the digital platform; and,

- Broadcasting distribution undertakings: the transition to digital transmission by cable companies.

Witnesses also told the Committee that the transition to the digital transmission of broadcast services is being driven by several key considerations. These include: better quality signals; a more efficient use of transmission capacity; and, the need for new or expanded revenue streams.

But the transition to digital is quite unlike previously witnessed changes in technology. As the Canadian Association of Broadcasters noted in its brief:

> … past changes in technology (black-and-white to colour TV; AM to FM radio) have been relatively simple — with standards in place, and usually with only one major change occurring within each industry at a given time.[4]

In this instance, however, all of these changes will be taking place at the same time, and with far less agreement on standards.[5]

The Canadian Broadcasting Corporation in its submission to the Committee also noted that:

> The ongoing digitisation of North American broadcasters' production and delivery facilities is the one change in technology that has and will most significantly impact Canadian broadcasting. In future years, the continued digitisation of communications and broadcasting infrastructures will further enhance a broadcaster's production techniques and ability to deliver programming to viewers and listeners.[6]

With these considerations in mind, the sections that follow summarize what the Committee was told about the digital transition.

B. What the Committee Heard

Why Digital?

Several witnesses explained to the Committee the rationale for the transition to digital technologies. Mr. Duff Roman, President, Digital Radio Roll-Out Inc., outlined the advantages for radio as follows:

> Digital radio technology will dramatically improve broadcast audio quality and reliability. But more than that, the new technology will enable the delivery of more than the traditional audio programming through enhanced program associated data and will facilitate the emergence of radio in the multimedia era with value-added, non-program-associated data services.
>
> Program-associated data services, or PAD, can include the provision of song titles, artists' names, CD numbers, e-commerce opportunities to make the CD available by fulfillment or even direct download, and all of the everyday alphanumeric data pertaining to the station's on-air programming.
>
> Non-program-associated data includes the possibilities of a number of specialized data services. These include, but are not limited to, electronic couponing, concierge services such as GM's On-Star, and full-fledged travel guidance systems.[7]

Mr. Roman also illustrated how digital radio will allow programmers to provide value-added content to audiences:

> For instance, for a CBC talk show, the alphanumeric screen will allow you to know what the subject is at all times, who the guest is, what the phone number is for an open-line show, what the particular topic is that day. It may also provide information as to how to access the topic from the various regions of Canada. It has tremendous applications.
>
> On the private side, one of the most frustrating things for our listeners is not knowing what song is playing. The song titles or names of the artists can be brought up on the screen and rotated indefinitely. Along with that, for instance, the bio of the artist could be seen as an alphanumeric stream. We could enhance Canadian content by being able to deliver a more complete package.

> From the enhancement of regular programming, we see those advantages. Then, because it's digital, you can have an interactivity through a cell phone. In other words, you can close the loop. We can't transmit back with digital radio, but we can close the interactive loop by using a cell phone.
>
> For instance, you could have a referendum; you could have open-line shows; different topics could be discussed. You could transact the delivery of music, for instance. That would take some copyright advancements, but as probably the greatest friend our Canadian talent artists have — the radio presenters who play their music — we would really love to be able to fulfill the listener's desire for the music they're hearing virtually instantly, with digital downloading. We have that kind of capability with digital radio. It is a broadband system and would facilitate that.[8]

As for television, the advantages of digital signals were described by Dr. Metin Akgun, Vice-President, Broadcast Technology Research, Communications Research Centre Canada, in the following way:

> What the digital technologies do is provide higher-quality sound and video. … there is a flexibility as to what we can use the channel capacity for in addition to programming service … for example, an electronic program guide or game and talk show participation, where people can say what they prefer or not instead of just the audience who is in the studio. For example, we can provide multi-camera sport viewing so people can say what part they want to see. Then there are other things … like video games and video on demand. They can ask for … travel information, even electronic newspapers. So it goes on and on, and the capacity is quite adequate for doing this.[9]

Similarly, in a paper prepared for the Committee, communications consultant Mr. David Keeble made the following observations about how digital television will change the relationship audiences will have with television:

> It's best to think of digital television as a kind of platform that can support various features, which may or may not be present in any viewer's home, and may be an integrated set or may be various linked components. Possible [f]eatures in a digital viewer's home: the ability to receive many channels; an interactive program guide; video on demand; the ability to receive new picture formats, including wide screen and high-definition signals; 5.1 channel

> surround sound, the ability to display high-definition …; wide-screen display; the ability to run … interactive TV applications; the ability to record and play back television on a hard-disk recorder (PVR), the ability to run sophisticated interactive TV applications, video downloaded to the TV from the Internet.[10]

Concerning the advantages for cable distributors Ms. Janet Yale, President and Chief Executive Officer, Canadian Cable Television Association, told the Committee that digital technology means:

> … more capacity to carry and distribute Canadian programming services. That means more selection and more diversity for Canadian viewers. Throughout the last decade, the number of services offered to our customers has tripled. In 2001 alone, the industry introduced 40 to 60 digital channels. … with new digital technology we can carry 10 to 12 new services for every old analog channel that we convert.[11]

Moreover, as Dr. Akgun told the Committee:

> Today, with the analog environment, it's just technically easier to provide blocks of channels, that is, tiers of services. So you may want to have one of the programs, but you may have to pay for the rest. Once we have it all digital, there should be the capability for me to pick and choose what I want, because you can encrypt those channels, and therefore you have the capability to decrypt certain channels and not others. Therefore, the cost doesn't have to go up in the future.[12]

All told, the main advantages cited by witnesses for the transition to digital technologies include: the ability by broadcasters to offer a better picture and sound, provide more programming choices, more flexible packages and new, non-programming options.

Needless to say, many points were also raised concerning the drawbacks and challenges of the transition to a fully digital Canadian broadcasting system. Indeed, many witnesses were of the view that this transition will create an uncertain environment for the Canadian broadcasting industry. For radio, these factors include: how digital radio is phased in; the cost of equipment; and copyright. For television, the key questions include: how conventional broadcasters will make the move to digital delivery without losing audiences; how digital television (DTV) will be phased in; and how pay and specialty services will be packaged and offered. Finally, for distributors, the main challenges will be standards for set-top boxes and who controls the revenue streams derived from new services, such as interactive television (iTV).

The next sections review what the Committee heard about these issues. Thereafter, proposed solutions are provided.

Economic Considerations

Most Canadians living in border cities can still receive over-the-air signals from United States, just as they did in the late 1940s and early 1950s before Canadian television was officially launched. Beginning in the late 1990s, many American broadcasters started to deliver high-definition television signals over the air. According to witnesses, this reality means that Canadian broadcasters must follow suit. As Mr. Glenn O'Farrell, President and Chief Executive Officer, Canadian Association of Broadcasters, explained:

> Canadians … have access to digital television service, for example, coming to them from across the border. It's a reality that we have to face as an industry. Were it not for our geographic proximity, we may not be looking at transition to digital in the same way. But we have to be cognizant of the fact that the digital signals that will cross the border from American sources will find viewers in Canadian homes, and they will go out and buy those sets simply because of the advantages of the new technology in large part, but the take-up will be there.[11]

Comparable challenges exist for radio broadcasters as they make the transition to Digital Audio Broadcasting (DAB). As Mr. Duff Roman told the Committee:

> … our industry recognized as early as 1992 that to remain competitive it, too, had to go digital. With the support and encouragement of government, the public and private broadcasters worked together to secure the spectrum, select the technology and provide guidance to the government for the rules and regulations required. The cooperative approach adopted by Canada is recognized and admired worldwide. Canada is seen as a world leader in the transition to … digital audio broadcasting.[11]

But these transitions will be expensive. By way of example, Canadian cable companies have been working on the transition to a digital infrastructure for about a decade. As Ms. Janet Yale told the Committee:

> Over the past decade we've changed a great deal. We've made the transition from analog to digital technology and are now on the cutting edge of technological innovation, something that benefits all Canadians. Two-way interactive broadband networks that our companies are building are the engine that will drive the government's innovation agenda. We've built one of the most extensive and advanced cable distribution infrastructures in the world and over the past five years our companies have invested more than $5 billion in network upgrades, technology, and infrastructure.[15]

For television, Mr. Kenneth Goldstein, Executive Vice-President and Chief Strategy Officer, CanWest Global Communications Corp., told the Committee that: "Moving to digital will require a very significant investment. For conventional television [including the CBC] the cost of building digital transmitters has been estimated to be up to $390 million."[16]

Several members were concerned about the economic implications of the transition on consumers. On this point, Mr. Gérald Chouinard, Program Manager, Rural and Remote Broadband Access, Communications Research Centre Canada, has this to say about digital radio:

> Currently, receivers are fairly expensive, but there is always the issue of volume of production. Things have already gotten off to a speedy start in Europe. They have receivers which cost less to manufacture. Once receivers are affordable by the general public, it will be rolled out.[17]

Furthermore, Mr. Roman told the Committee that one retailer:

> … has set as a price the $200 mark, Canadian, for an average receiver. It might be a Walkman-type receiver, or it might be a desktop or tabletop receiver. In the meetings we've had with them, that's the magic mark. If we can bring it in at $199, under the $200, they're telling us that it will fly off the shelves. There will be no problem.[18]

As for television, Mr. Kenneth Goldstein had this to say:

> The consumer is the key, and in terms of being able to respond or wanting to respond, in terms of the price of the equipment falling to affordable levels, there are a number of things that go into this. We often say in this business it's a chicken and an egg issue. Will somebody buy the new device, and therefore there'll be enough people to make the transmission justifiable; will somebody put out the transmission so enough people will be interested in buying the device?
>
> There is a history of consumer electronics falling in price. The fact is, if you adjust for inflation, you can buy a computer or a colour television set or a VCR today all for less money than a radio cost in 1936. But these things take time. The VCR took about 15 years until it was more or less ubiquitous."[19]

Seen from another perspective, Mr. David Keeble reminded the Committee that new technologies tend to go through four phases before full adoption by consumers:

1. The **invention** phase, in which a potentially successful concept is realized in many forms, all incompatible with each other, all vying to become "the standard". Some inventions never graduate from this phase.

2. Those that do graduate become standardized sufficiently for content producers and consumers to have confidence they will last, at which point they begin to acquire the technology. Early adopters want the new thing right away and are prepared to pay high prices and endure teething pains. The **early adoption** phase is characterized by slowly growing penetration of the technology in the population.

3. Middle adopters wait for volume to grow, prices to shrink, and the technology to settle down. When they are ready to adopt, the curves can grow steeply, by 10% of the population or more every year, so that the **middle adoption phase** lasts about six or seven years, while penetration grows from about 5% or 10% to more than half the population.

4. Late adopters only enter the market in the **consolidation phase**, when the new technology has completely replaced the old one, e.g. AM-only radios or LPs are simply no longer available for purchase. They push penetration more slowly up to the natural limit for that technology.[20]

In other words, the economic impact on Canadian consumers during the digital transition will be felt most by those who adopt the technologies during the early stages of the transition. Thereafter, costs for consumers will, by necessity, drop in order to entice more of the population to adopt these new broadcasting technologies.

Policy Considerations

The Committee notes that running in parallel with economic concerns is the question of how Canada's broadcasting policy objectives can be upheld through the digital transition, and beyond. According to the CAB:

> The goals used to guide the development of public policy will not change because of the introduction of digital technology. Public policy will continue to benefit from helping over-the-air television broadcasters maintain and develop the businesses that make the greatest policy contribution. Over-the-air television broadcasters play a unique role in the Canadian broadcasting system: They make the greatest contribution to Canadian viewing; they provide free local service.[21]

A second policy consideration is how Canada's transition to digital broadcasting will impact the production and distribution of Canadian content. As Mr. David Keeble told the Committee:

> The digital transition … will profoundly alter how to use television shelf space to encourage the viewing of Canadian programs. "Scheduling" may no longer be as significant. Currently, regulation encourages the viewing of Canadian content by setting exhibition requirements, including special requirements for exhibition in "prime time." Broadcasters must provide so much Canadian content on a percentage basis, every week; they have a percentage they must meet in prime time; and now a percentage of this must be "priority programming".
>
> In the transition, to the extent that viewers seek and download individual programs — whether from broadcasters via a PVR or over the Internet — the use of exhibition quotas will have less impact, so regulation of prime time exhibition will also have less impact.[22]

Similarly, the CBC in its brief told the Committee that:

> The broadcasting system in Canada has taken advantage of the rollout of new technologies. Many of these technological developments, such as the digitisation of content and delivery, require a complete review and transformation of the existing program production and delivery infrastructure. The associated financing and engineering requirements are being undertaken by Canadian broadcasters at the fastest possible speed, ensuring that sound and prudent business practices are respected.[23]

Furthermore, according to the CAB:

> If we approach the digital transition as simply a "spectrum-swapping" exercise, we may run the risk of losing sight of the underlying reason for the Canadian broadcasting system as we know it. For example, if radio or conventional television and specialty and pay services are not permitted to take advantage of the full potential of digital broadcasting and distribution in terms of ancillary revenue streams, then their ability to continue to support quality Canadian programs will have been compromised. Equally, we must remember that, if broadcasters are forced to vacate their analog signals too soon, the value of cross-promotion from analog to digital may be lost. Thus, any proposal for the digital transition must meet not only the test of being consumer-friendly, but also the test of being friendly to the continued investment in Canadian programs.[24]

For these reasons, the CAB proposed the following policy principles for digital television:

- all local stations should continue to have priority carriage; all program-related data (interactive, or otherwise) must be carried (i.e., there should be no gatekeeping by BDUs);

- simultaneous substitution must be preserved; advertising revenues should be controlled by broadcasters (i.e., BDUs should be prevented from replacing advertisements to generate their own revenue streams); uniform hardware and software standards should be established by government; and

- anti-competitive behaviour must be prohibited.

As for pay and specialty services, the CAB suggested many of the same principles and noted that it would make more sense if there were a common standard for interactivity. This way, it will be less likely that smaller players will be squeezed out due to high costs.

But how is the digital transition to be managed by broadcasters and government in the coming years? In the past, the federal government set standards for radio and television reception to ensure that Canadians would be able to receive broadcast signals. As Mr. David Keeble told the Committee:

> … we have a standard for over-the-air, but not for the other media by which viewers receive TV. Nine years ago, it might have been possible to create a single standard for Canada out of the various technologies that were on offer worldwide. … However, the first satellite companies to offer services did not agree; difference with cable became an issue, and Industry Canada did not complete a process for general standardization. The result is a large installed base of non-interoperable set-top boxes, and duplicate digital program streams carrying the same services in order to feed these separate universes of non-interoperable boxes.[25]

Thus, for reasons such as these, most of the new tuners for digital television (either built-in or in set-top boxes) are proprietary and/or incompatible with competing systems. Not only does this phenomenon risk alienating Canadian consumers, but it could also impede the public interest goals inherent in a smooth digital transition. This is why the CAB told the Committee that: "the Government must give serious consideration to establishing at least some minimum standards for DTV that will govern the new "tuners" that will accompany the roll-out of digital."[26] **The Committee agrees with these points and notes that this is an important area for government action**. As Mr. Keeble told the Committee:

> The main missing feature of the Canadian policy model is outside the [CRTC]'s control, i.e. the lack of action on standards. This is a serious omission that may enable anti-competitive gatekeeping behaviour, such as has been seen in Europe for some time.
>
> Since such behaviour could seriously damage the ability of program providers to create successful business models in the digital transition, it is fundamental to the success of the Canadian programming effort that additional policy direction address this issue.[27]

A second consideration is copyright. Unlike analog, each copy of a program is identical to the original. This means that a television show copied from an over-the-air broadcaster can be copied repeatedly, or sent electronically to anyone, anywhere in the world. Evidence of this has already been seen with Napster and the many other peer-to-peer applications that can be found on the Internet. Consequently, copyright law will also need to be reformed (see Chapter 13).

A third issue is timing. In the United States, the digital roll-out was originally mandated by law for 2006 (although it is unlikely that this date will be met).[28] In September 1999, the U.S. Congressional Budget Office (CBO), a non-partisan Congressional agency, produced a report on the transition to digital television.[29] This report lists four preconditions for a successful transition to digital television:

1. The technology has to work as promised;

2. Digital broadcasts have to begin as early as possible in the transition period;

3. Digital broadcasts must be available on cable systems; and

4. Consumer demand must be there for the speedy adoption of the new technology.

Within the Canadian context the first question that must be addressed is whether a timetable for analog cut-off is necessary. According to Mr. Keeble:

> At a guess, we should be in the "consolidation phase" of digital over-the-air by about 2012. If digital set-tops (to convert older analog sets) are inexpensive, we may see the end of analog over-the-air around 2017-2020. But we should not be too optimistic — AM radio is still with us, and has its uses.[30]

As for the CRTC, to date, it has taken the position that a mandated transition deadline should not be imposed, for the following reasons:

> There was … broad acknowledgement that the Commission's preliminary proposal for a voluntary, market-driven transition model, without mandated deadlines, would be the most realistic and appropriate approach for Canada to adopt. The Canadian

> Association of Broadcasters (CAB) emphasized that "the DTV rollout should take place in stages, moving from the largest primary markets to secondary markets over a period of years". It added that, "the pace and degree of market acceptance in larger markets will determine when the DTV rollout can be extended to smaller markets." The Canadian Cable Television Association (CCTA) agreed with the CAB's view that the market-driven model proposed by the CRTC would be the most appropriate approach, and would be far preferable to "...earlier approaches in North America that assumed the abandonment of the analog spectrum."[31]

Furthermore:

> Some concern was expressed about the difficult business decisions that confront small market broadcasters in their efforts to weigh accurately the benefits and costs of converting to DTV. Télé Inter-Rives Ltée, the licensee of CIMT-TV Rivière-du-Loup and owner of three other television stations in the Gaspé region of Quebec, proposed a delay in the DTV roll-out of between five and ten years in small markets.[32]

Moreover, the CBC's "current programming priorities and limited resources do not permit the Corporation to pursue digital television programming activities in any substantive manner at this time."[33]

Thus, given the amount of experimentation and innovation that is still required, the uncertainties about acceptance, the lack of a strong business model, and the need for a coherent public-policy framework, the arguments against a mandated transition deadline seem sensible for the time being.

That said, the CAB notes that at some point it will become necessary:

> ... to set a reasonable time frame for the full transfer from analog to digital, so that the advantages of reclaiming spectrum can also be realized. But setting those dates will not be a simple process. We must always remember that Canada's radio and television broadcasters operate in value chain continuums, and forcing them out of one part of the continuum before the new part is able to replace it fully could have the unintended effect of weakening Canadian programmers as they face increasing, and unregulated, non-Canadian competitors.[34]

In short, it seems that the digital "transition" will not be easy for Canada's creators, broadcasters and distributors. The process will be expensive because of the need for to replace equipment, provide new services and the need to work out new arrangements among the different groups involved. Furthermore, a successful transition will require a well-thought-out plan, cooperation among the players, and a well-conceived plan on the part of government and the regulator. Additionally, the digital transition is taking place at a time when profits for Canada's broadcasters and distributors are in flux (see Chapter 8). This, in turn, calls into question how the billions of dollars required for the transition to a fully digital infrastructure will be raised.

C. Proposed Solutions

All told, witnesses were clear on several points. First no one knows exactly how much the digital transition will cost and, second, it is highly unlikely that anything is going to stop the transition from happening. A third point of agreement among witnesses was that the broadcasting system is going to go through an increasingly turbulent period as it attempts to deal with the challenges raised by the digital revolution. This is why all witnesses who spoke about the digital transition urged the Committee to ensure that the government be ready with a plan.

In a background paper for the Committee, Professor Richard Schultz also recognized the difficulties of the forthcoming transition. He stated:

> It is … not an exaggeration to argue that at no time has the CRTC faced such a degree of turbulence as it does today and will continue to do so for the foreseeable future. The significance of the changing environmental conditions for the operations and effectiveness of the CRTC in fulfilling its fundamental responsibilities should not be underestimated for they may challenge the basic efficacy of existing regulatory powers and ultimately the ability of the CRTC to exercise any effective power to "command and control" the broadcasting sector and the participants therein. Consequently, any effort to revise Canadian broadcasting policy that fails to incorporate a full understanding of the enormity of the potential power of environmental forces will be outdated as soon as the attempt is made.[11]

The Committee recognizes that responding to the complexity of these challenges will not be an easy task. It notes that research provided to the Committee shows that countries worldwide have been struggling to find the right model that balances policy driven and "laissez-faire" approaches to the digital transition.[36] That said, in no case has a country allowed the market to totally drive the transition. Indeed, even in the United States, where the policy model is largely governed by a laissez-faire approach, the Federal Communications Commission has had to step in and insist that the industries involved cooperate to accelerate the transition.

That being said, the Committee is also aware that it would take just a few serious mistakes on the part of the regulator, broadcasters or distributors for the entire broadcasting industry to be thrown into economic turmoil. With this in mind, the Committee makes the following recommendations:

Digital Transition Policy Framework

In light of what it has heard, the Committee believes that government should play a central role in the coming years to ensure that a policy framework for the digital transition is developed in such a way that all stakeholders are equally and fairly involved. Accordingly:

RECOMMENDATION 12.1:

The Committee recommends that the responsible federal departments and agencies develop a comprehensive plan for the digital transition in conjunction with the broadcasting industry and related public, private and not-for-profit stakeholders.

Access

The Committee is of the view that the government and the CRTC will need to ensure that broadcast distributors do not devise gatekeeping mechanisms that prevent broadcasters from having fair and equal access to all digital viewers. For this reason:

RECOMMENDATION 12.2:

The Committee recommends that the digital transition be managed in such a way that the broadcasting system provides fair and open access to distributors, broadcasters, listeners and viewers.

Standards

The Committee recognizes that a complete absence of standards — particularly for digital television — will likely slow the adoption of certain digital technologies. With this in mind:

RECOMMENDATION 12.3:

The Committee recommends that appropriate hardware and software standards be established to protect listeners' and viewers' investments in digital technology and to prevent the use of proprietary technology and anti-competitive behaviour that may limit fair competition and access to subscribers.

Such standards should include clear hardware and software standards (i.e., menuing) for all types of set-top boxes. Furthermore, such standards should ensure that Canadians have clear and easy access to Canadian programming options. Finally, the standards should be designed to maximize backwards compatibility, thereby reducing the premature obsolescence of consumer equipment.

Consumer Choice and Control

As noted in Chapter 8, the Committee recognizes that competition and consumer choice are implicit elements of Canada's broadcasting policy. Within the context of the digital transition, the Committee is concerned by the possibility that anti-competitive practices might impede the ability of Canada's broadcasters to create new programming, or to offer innovative non-programming services.

RECOMMENDATION 12.4:

The Committee recommends that regulations be developed to prevent the manipulation or change in any way by distributors of signals downloaded to or by subscribers.

Such regulations should also allow all broadcasters — whether not-for-profit, public or private — the flexibility to respond to the preferences of viewers for particular features and services offered.

Regulatory Support

As noted in Chapter 9, the Committee is gravely concerned by the situation of local programming in the Canadian broadcasting system. It therefore sees it as essential that certain pre-existing regulatory conditions remain, at least for the duration of the digital transition. To this end:

RECOMMENDATION 12.5:

The Committee recommends that local stations should continue to have priority carriage through the digital transition.

It was noted in Chapter 8 that simultaneous substitution is a central means whereby Canadian broadcasters are able to maintain the value of the foreign programming they purchase. Simultaneous substitution also protects the value of the advertising for Canada's advertisers. By extension, this regulatory privilege enables Canada's broadcasters to cross-promote Canadian programming and to generate needed revenue to produce or purchase original Canadian programming. In light of these circumstances, the Committee sees it as essential that simultaneous substitution be preserved, at the very least, for the duration of the digital transition.

RECOMMENDATION 12.6:

The Committee recommends that simultaneous substitution be preserved during the digital transition.

New Revenue Sources

As noted above, several witnesses pointed out that a major advantage of digital broadcasting will be the potential for new revenue sources derived from services such as:

- interactive conventional television,
- specialty and pay services;
- radio services using their own digital over-the-air transmission facilities and/or the digital distribution technology of cable and DTH operators;
- multicasting and datacasting services that can make use of spare capacity in the spectrum assigned to digital over-the-air broadcasting; and
- other subscriptions or transactions.

The Committee is of the view that it is essential that all broadcasters (i.e., public, private, not-for-profit and community) and distributors be allowed to benefit fairly from these potential revenue streams. Therefore:

RECOMMENDATION 12.7:

The Committee recommends that government policy allow all broadcasters and distributors to benefit fairly from the potential revenues available from a variety of new sources associated with their regulated activities.

Privacy

The Committee sees the preservation of privacy rights as being central to the introduction of new broadcasting technologies and services. As such:

RECOMMENDATION 12.8:

The Committee recommends that the CRTC develop regulations to ensure that the data collected by broadcasters and/or broadcasting distribution undertakings from the

interactive and feedback capabilities of set-top boxes and other digital devices be in compliance with applicable privacy and consumer laws.

Measurement and Reporting

In a paper Mr. David Keeble prepared for the Committee he notes that there is a need to "develop objective measures of the effectiveness of the policy effort" for the digital transition and that the government must "put substantial effort into monitoring the impact of the digital transition." Furthermore, he notes that the digital transition will solve certain measurement problems:

> For example, digital receivers can use software to store and upload viewing information from consenting homes; the signals can carry exact information on each title so that measurement of Canadian programming becomes easier, and so on. But it will require the concerted effort of many parties to bring this about, and the will to act from policy makers.

The Committee agrees with these observations. As noted repeatedly throughout this report, the Committee was frequently frustrated by the absence of proper measurement and reporting techniques. This is why Chapter 19 makes a number of recommendations concerning the need for improved measurement and reporting methods for the system as a whole. As for the digital transition, the Committee sees this as an ideal opportunity to embed certain measurement and reporting practices from the outset. To this end:

RECOMMENDATION 12.9:

The Committee recommends that the government work with broadcasting industry stakeholders to ensure that measurement and reporting techniques are devised to gauge the spread of Canadians' uses of digital technologies.

These techniques should include ways to appraise the impact of digital technologies on Canadian broadcasting policy objectives. For example, they should be able to tell us what impact PVR use is having on Canadian viewing, and the subsequent impact of any other measures — such as increased promotion for Canadian programs — that we undertake.

Indeed, without such measures, the Committee is of the view that it will be very difficult to devise effective policies, not only for the digital transition, but for the Canadian broadcasting system as a whole.

Preservation

As noted in Chapter 10, Northern and Aboriginal witnesses told the Committee that they do not have the needed financial resources to digitize much of the historical footage of their peoples that they have accumulated over time. The Committee was also told on a number of site visits to broadcasters across Canada that the digitization of film and video archives is a costly undertaking. The Committee notes that in its June 1999 report, *A Sense of Place — A Sense of Being*, that it recommended "that the Department of Canadian Heritage take immediate action to obtain additional resources and to establish a fund dedicated to the preservation of items of national significance that are in danger of being lost through deterioration."[illegible] In keeping with the spirit of this recommendation:

RECOMMENDATION 12.10:

The Committee recommends that the Department of Canadian Heritage establish a cost-sharing strategy to ensure that the archival footage of Canada's broadcasters is not lost due to deterioration.

Endnotes

[1] Without a digital revolution there still would have been technological advances in television via satellite. It could and still can be done in analog. All digital conversion did was to compress the amount of information (and therefore free up spectrum for more of the same) and to improve the presentation quality and control of the delivery.

[2] Canadian Association of Broadcasters, Brief.

[3] See: Public Notice CRTC 1995-184, Public Notice CRTC 2002-32, and Public Notice CRTC 2002-48.

[4] Canadian Association of Broadcasters, Brief.

[5] Standards are a double-edged sword: a) by having them in place, they open up the market to more competition; b) by not forcing manufacturers to a standard means that they can get to market faster, more innovatively, at a higher profit margin and in control of their niche. Thus, if a manufacturer sees a niche, wants to take the risk, can convince a subset of users of that need, no agency will be able to stop a product or a technology from being introduced. Many manufacturers are willing to lead the marketplace, and then to allow the industry to catch up, by which time they will be on to the next innovation. This is also the reason why many companies no longer bother with patents. By the time a patent is taken out, the next evolution of technology is there; as such, if a company can prove that it used the technology first, its invention is protected by default.

[6] Ibid.

[7] Meeting of the Standing Committee on Canadian Heritage, 31 January 2002.

[8] Ibid.

[9] Ibid.

[10] David Keeble, *Creating and Distributing Canadian Content Through the Digital Transition*, Prepared for the Standing Committee on Canadian Heritage, p. 11-12.

[11] Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[12] Meeting of the Standing Committee on Canadian Heritage, 31 January 2002.

[13] Ibid.

[14] Meeting of the Standing Committee on Canadian Heritage, 21 February 2002.

[15] Meeting of the Standing Committee on Canadian Heritage, 31 January 2002.

[16] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[17] Meeting of the Standing Committee on Canadian Heritage, 31 January 2002.

[18] Ibid.

[19] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[20] Keeble, p. 12.

[21] Canadian Association of Broadcasters, Appendix C.

[22] Keeble, p. 10.

[23] Canadian Broadcasting Corporation, p. 50.

[24] Canadian Association of Broadcasters.

[25] Keeble, p. 24.

[26] Ibid.

[27] Ibid.

[28] There is, however, room for slippage in markets where less than 85% of households can receive digital.

[29] U.S. Congressional Budget Office, "Completing the transition to digital television," September 1999.

[30] Keeble, p. 13.

[31] Public Notice CRTC 2002-32.

[32] Ibid.

[33] Ibid.

[34] Canadian Association of Broadcasters.

[35] Richard J. Schultz, *The Operation and the Effectiveness of the Canadian Radio-television and Telecommunications Commission*, Prepared for the Standing Committee on Canadian Heritage, p. 15.

[36] Richard J. Paradis, *Study on Broadcasting Regulatory Activities*, Prepared for the House of Commons Standing Committee on Canadian Heritage.

[37] Keeble, p. 28.

[38] A Sense of Place, A Sense of Being: *The Evolving Role of the Federal Government In Support of Culture in Canada*. Report of the Standing Committee on Canadian Heritage. Ottawa: House of Commons, 1999. Recommendation 31, p. 67.

MAINTAINING A SINGLE SYSTEM

Chapter 13

Copyright

A. What is Copyright?

Copyright is a property right in an original work, giving the holder (usually the creator) certain exclusive rights in relation to the work, such as the right to reproduce it, to perform it in public, or to communicate it to the public via telecommunications. It applies to all original literary, dramatic, musical and artistic works, including television and radio programs, as well as performances, sound recordings and communication signals. In Canada, these rights are protected under the federal *Copyright Act*.

The purpose of the *Copyright Act* is to protect the property rights of the creators who produce the work while promoting creativity and the orderly exchange of knowledge and information. This involves balancing the rights and interests of those who create material and those who want to publish, share or benefit from it.

In general, creators get recognition, money and the right to control how their work is used. This is intended to encourage the sharing of the material. In exchange for this, creators are obliged to allow some limited use of their material, such as "fair dealing" with the work for the purposes of private study, research, criticism, review, or news reporting. Copyright lasts for a limited period, usually the length of the creator's life, plus 50 years. After that period, the copyright expires and the work passes into the "public domain". Once a work is in the public domain, anyone can use it without charge and without fear of infringement. For example, as the author Molière (Jean-Baptiste Poquelin) has been dead for over 50 years, his works may be produced or published by anyone without paying any royalties to the creator or his heirs.

However, during the time that the work is protected by copyright, anyone who wishes to use copyrighted material in a way that is not exempted under the *Copyright Act* must obtain the copyright holder's authorization, and more likely than not, pay for its use. This is usually in the form of royalty payments to the copyright holder or a collective society acting on the holder's behalf. These royalty payments are either negotiated between the parties or, in specified cases, Copyright Board Canada establishes the royalties to be paid for the use of the works.

B. Telecommunications Rights

Most television broadcasters and radio stations do not create or produce the material they broadcast themselves. Rather, they acquire it from the actual creators or originators. CTV, for example, did not create the television drama *The West Wing*, it simply obtained permission from the copyright holder to broadcast the show to Canadian audiences over its own channel.

Telecommunication rights, therefore, represent the exclusive right copyright holders have to transmit their works to the public via telecommunications. Here, the copyright holder has opted to permit this particular Canadian television channel to broadcast this particular television show. In addition to a monetary payment, there may well be other conditions attached to the right to broadcast the show, such as time restrictions and limits on the number of times the show is broadcast.

Once a particular broadcasting undertaking has secured the exclusive right to broadcast a given work, this gives it certain rights against that same work being broadcast elsewhere. Thus, if CTV has the exclusive right to broadcast The *West Wing*, it will be able to enforce this right against any other broadcaster should another Canadian television channel also broadcast the show in Canada.

Although broadcasters do not own the copyright in the material they acquire and then simply broadcast, they do, however, own the copyright of the broadcast signal itself, as provided by section 24 of the *Copyright Act*. This is a subtle but important distinction that gains relevancy with the issue of the retransmission of broadcasts, to be discussed below.

C. Retransmission Rights

The retransmission of material is the domain of cable, satellite — and possibly — Internet distributors. Retransmission is specifically contemplated by section 31 of the *Copyright Act*, which gives retransmitters such as cable and satellite distributors the right to retransmit material if they have paid the fee set by Copyright Board Canada under the compulsory licence created by the Act for retransmission purposes. In addition, the *Copyright Act* specifically excludes retransmitters from the definition of "broadcaster" for the purposes of the Act.

The development of the retransmission right is in part the result of perceived inequities between broadcasters and cable and satellite providers. Prior to 1990, cable and satellite providers could deliver programming and services to subscribers and charge subscribers fees for doing so without having to compensate the copyright holders for the broadcast material as broadcasters must. Cable and satellite providers were able to simply capture the broadcast signals containing the programs literally out of the air and then transmit them over their own equipment. If necessary, the signal could be relayed by equipment from place to place, thereby delivering a signal that was local to Spokane, Washington, say, to a point some distance removed, such as Edmonton. Under this system, the copyright holders of the material being broadcast were being bypassed and not receiving the payment to which they were entitled as copyright holder.

Copyright law in Canada was amended as a result of the Free Trade Agreement negotiated between the United States and Canada and effectively ended the free ride enjoyed by cable and satellite providers. Since 1990, cable and satellite providers and any others who profit from providing distant broadcast signals to customers have been required to pay for the programming they retransmit to their subscribers.[1]

Under this post-1990 system, the copyright and retransmission rights holders are considered properly compensated. Accordingly, to operate legally, cable and satellite providers are now obliged to pay royalty fees set by Copyright Board Canada to collectives that represent program producers and other rights owners.

D. Compulsory Licences

In an attempt to strike a balance between individual rights holders — those who hold copyright in a particular work — and the broader interests of broadcast policy in serving the public interest, Parliament created a "compulsory licence" for the retransmission of broadcast programming. A compulsory licence is a statutorily-created mechanism that allows certain parties (such as cable companies) to use copyrighted material (such as television broadcasts) without the explicit permission of the copyright owner, provided they have made arrangements to pay royalties. These royalties are usually paid to a copyright collective that collects royalties on behalf of and distributes them to copyright owners. The royalties payable are in turn approved as tariffs by Copyright Board

Canada. The compulsory licence is thus a public policy-driven exception to the general copyright principle that copyright owners have exclusive control over their works. The compulsory licence is an element of the federal *Copyright Act*, which, as national legislation, applies across and throughout Canada, including the civil law province of Quebec.

A witness representing the Canadian Association of Broadcasters characterized the compulsory licence as a reasonable compromise to the alternative of no payment at all.[2] Other witnesses, however, called for its outright abolition and replacement by a free market system in which both value and payment are negotiated between parties. For instance, some broadcasters would prefer to negotiate directly with the rights holders in an open market system rather than having to go through Copyright Board as is the current situation.[3] After all, it is already the case that the majority of services and content offered by pay-per-view, specialty and pay television channels are negotiated in the open market between distributors and rights holders.[4]

E Internet Retransmission

Innovations in technology since 1990 have presented broadcasters and retransmitters with interesting challenges, and the particular issue of transmitting television signals over the Internet ("Internet retransmission") has been the subject of considerable debate.

As noted in Chapter 3, the digital revolution has found its way onto the television and radio broadcast stage, driven in large part by the difference between digital and analog technology. Analog technology transmits information as continuously varying electrical currents or waves. Digital, on the other hand, refers to technology in which information is expressed in binary digits, referred to as "bits", transmitted in pulses or bursts rather than in a continuous wave. This has significant implications for copyright and broadcast, because once information is in digital form, it may be easily and cheaply copied or transmitted without any loss of information or quality. Consider, for example, how easily an e-mail message may be forwarded to multiple recipients, who then forward it in turn to other recipients and so on, all without any loss of information whatever.

The Internet is a digitally driven system, and its instantaneous global reach is well known. This evolution in technology also facilitated our ability to transmit or "stream" broadcast material over the Internet, thereby allowing computer owners to view television programs on their personal computers. This, in turn, raises serious copyright and broadcast issues.

In late 1999, a company called iCraveTV began retransmitting 17 Canadian and U.S. television signals all over the world to anyone who had Internet access. The company received over-the-air broadcast signals, converted them to digital and Internet compatible format, and then streamed them over the Internet. The company did not pay any of the fees or royalties that regular broadcasters must, and thus the copyright holders of the material being broadcast by iCrave were not receiving any of the compensation to which they were entitled. iCrave claimed it had a CRTC new media exemption order granting new media operators freedom from regulations, and also argued that it could operate under the compulsory licence for retransmissions created under section 31 of the *Copyright Act*, which had been adopted before the Internet emerged as a global network.

Reaction to iCrave's business was swift. Legal proceedings were launched in both the United States and Canada seeking to prevent iCrave from transmitting copyrighted material without permission. While these legal responses succeeded in stopping iCrave, they did little to address the underlying issue, which was the particular relationship between new technologies and the compulsory licence established for retransmission under section 31 of the *Copyright Act*.

The iCrave situation exposed a problem with the compulsory licence. When it was created, the compulsory licence was intended to apply only to the retransmission of over-the-air signals. Retransmission, in turn, covered only cable and satellite companies. What to do about Internet retransmission, which was neither cable nor satellite? When it was enacted, the Copyright Act simply did not contemplate the development of new technologies that operated in another, different fashion and thus is silent on this issue. The Copyright Act therefore does not specifically exclude the Internet from the retransmission regime set out in section 31 of the Act. Moreover, in 1999 the CRTC decided it would not regulate the Internet,[5] leaving the issue of Internet retransmission entirely up in the air.[6]

In 2001, a company called JumpTV.com, an Internet-based broadcaster, applied to Copyright Board Canada for a tariff in connection with the retransmission of television networks. It sought to offer viewers with personal computers a fourth way — after over-the-air, cable, and satellite television systems — to receive television broadcast signals. The distinction between JumpTV and iCrave is that JumpTV applied to Copyright Board Canada to establish a tariff for Internet retransmission before commencing operations; iCrave did not.

This application triggered a six-month consultation period jointly sponsored by the Department of Canadian Heritage and Industry Canada to examine issues concerning Internet retransmission and the compulsory licence. As a result, Bill C-11 (An Act to amend the *Copyright Act*) was introduced in the House of Commons to create a framework for non-conventional broadcast programming to operate under the terms of the compulsory retransmission licence available to conventional transmitters. This bill was referred to the Standing Committee on Canadian Heritage for study.

The question of whether to allow Internet transmitters to have the benefit of the compulsory licence conventional broadcasters use generated much discussion.

Representatives from JumpTV who appeared before the Committee argued that it could — and indeed wished to — operate under the same regulatory regime as conventional broadcasters.[7] They urged the Committee to enact regulations that would allow them to retransmit signals as satellite or cable companies currently do, and submitted that the only difference between themselves and conventional broadcasters was the terminus of the broadcast signal — a personal computer as opposed to a television set.

Furthermore, in their submissions and evidence to the Committee, they stressed that they would pay all applicable tariffs and fees for copyright under the compulsory licence, and would ensure that appropriate technology would be in place to ensure that these Internet-based signals would only be transmitted within Canada to paying subscribers.[8] Several witnesses appeared before the Committee to testify to the efficacy of software that limits reception of Internet-retransmitted signals to specific geographic locations.[9]

It is this latter point that surfaced as one of the most contentious issues with regard to Internet retransmission. Given the ease with which material may be copied and transmitted over the Internet, several witnesses expressed some scepticism as to whether signals transmitted via the Internet could in fact be geographically constrained or limited to a specific area.[10] They argued that the global reach of the Internet might well lead to copyright-protected material being distributed. Nevertheless, representatives from JumpTV maintained that if the licencing regulations required a geographical restriction in order to broadcast signals over the Internet, then this would be adhered to.[11]

A further area of concern with granting a compulsory licence to Internet broadcasters was the potential dilution of existing exclusive-rights-holder's interests in the broadcasting of live sporting events. The Committee heard that exclusive broadcast rights are among the most valuable assets of a professional sports league and professional sports team. Accordingly, the availability of an additional compulsory licence to an Internet retransmitter for potential broadcast to local broadcast territories — and hence another broadcast option for viewers — makes those broadcast rights less valuable.[12] Any extension of the compulsory licence to Internet retransmitters was resisted on this basis.

Other industry representatives such as the Canadian Motion Picture Distributors Association, the Canadian Association of Broadcasters, the Society of Composers, Authors and Music Publishers of Canada, and the Canadian Film and Television Production Association also resisted the extension of compulsory licences to Internet retransmitters. In their submissions to the Committee, these organisations called for a so-called "Internet carve-out" excluding Internet retransmitters as entities that can apply for a compulsory licence. Reasons cited included concerns that Internet technology constituted an unwarranted expropriation of copyright owner's exclusive rights and that copyright owners would not be effectively protected in light of the Internet's rapidly growing and evolving technology.[13] There were also concerns that, given that nearly 100% of Canadian households have a television set, with more than 75% of those subscribing to the services of a conventional broadcasting undertaking, Internet retransmission would not enhance access to the broadcasting system.[14]

Resistance to licencing Internet broadcasting came from further afield as well. The United States House of Representatives Committee on the Judiciary expressed concern in a letter to the Canadian Ambassador to the United States that attempts to amend the *Copyright Act* to allow Internet retransmitters a compulsory licence disregards the singular features of the Internet in such a way that to facilitate the pirating of copyrighted U.S. works and the global leakage of U.S. copyrighted content.[15] Moreover, it would undermine if not eradicate the ability of U.S. copyright holders to control the distribution of their material to conventional broadcasters, thus dramatically reducing the value of the material.

After hearing submissions from interested parties and organizations, the Standing Committee on Canadian Heritage amended Bill C-11 to deny Internet retransmitters eligibility for the compulsory licence necessary to legally broadcast material over the Internet. The *Copyright Act* was accordingly amended to explicitly exclude Internet broadcasters from the definition of "retransmitter" and "new media retransmitter".

Bill C-11, as amended, received Royal Assent on 12 December 2002. The intent of the amendment is to clarify that the interests of broadcasters and copyright holders will be protected in the digital environment. In January 2003, the CRTC restated its position that it will not regulate internet retransmitters. In its report to the Governor General in Council, it said that "it does not consider it necessary or appropriate to require the licencing of internet retransmitters."[18]

F. Neighbouring Rights

Neighbouring rights represent three additional types of subject matter that are not included within the statutory definition of "works" in the *Copyright Act* but, nevertheless, receive copyright protection under the Act. These additional areas are (i) performer's performances, (ii) sound recordings and (iii) communication signals.

Originally, copyright related to author's and artist's "works", which as now defined in the *Copyright Act* include literary, dramatic, musical and artistic works. These remain the foundation of copyrighted interests. In more recent times, however, performers, record producers and broadcasters have been accorded certain rights in their "neighbouring works".

These rights are the result of amendments to the *Copyright Act* made in 1997. Prior to this time, Canadian radio stations were obliged to pay royalties to the music rights holders, for example, music composers and lyricists. The recognition of neighbouring rights, however, extended copyright to performers and record manufacturers on the basis that they added a substantial value to musical composition and are as deserving of compensation as the composer is. Today, radio stations are obliged to pay royalties not only to the music rights holders, but to the performer and record maker as well.

If copyright is intended to protect an artist's or author's original work, it may be difficult at first to see why the performance, recording and broadcast of Tosca should all be copyrighted. After all, the conductor and musicians did not write the opera; Puccini did. Even if the performance is dazzling and innovative, it could be argued there is nothing fundamentally original about it — it remains Puccini's work. The neighbouring right, however, and thus this particular copyright lies in the performance itself, not the original work, so it is a step removed from the author's right (and hence a "neighbouring" right). Thus, according to this argument, the interpretation of a song by a singer is as worthy of protection as the work in the original song itself. By way of example, it could be argued that Judy Garland's rendition of *Over the Rainbow* is the song, notwithstanding the fact that it was written by Harold Arlen and E.Y. "Yip" Harburg.

Similarly, although the makers of sound recordings and broadcasters do no original work in recording or transmitting the signal, they are entitled to a copyright that is intended not to award originality but to protect their investment in the creation and distribution of the sound or signal.[17]

G. Ephemeral Recordings

Ephemeral recordings are another exception to the general prohibition against copying material. In certain limited circumstances, the *Copyright Act* allows for the making of "ephemeral recordings" — temporary copies of a work to facilitate its broadcast use.

Broadcasters had long claimed that they were permitted to make temporary ("ephemeral") recordings of works for later broadcast as an ancillary part of the public telecommunications right, provided that all the requisite royalties have been paid to the appropriate bodies. Broadcasters use this practice to broadcast an event live — such as an outdoor concert performance — and to broadcast a delayed recording of the same performance at a later time to another time zone. The live and delayed television broadcasts of Canada Day celebrations across the country are a good example of this use.

This had been the subject of some controversy: copyright owners disagreed with the broadcaster's position, arguing that the *Copyright Act* granted them separate and distinct rights in the *broadcast* and the *recording* of their works, and that when their work was copied, they were entitled to an additional royalty over and above the broadcast payment. This position was validated in a 1990 Supreme Court of Canada decision.[18] The Court in this case found no so-called "ephemeral rights exception" to the *Copyright Act*, and stated that in order for such a right to exist, Parliament would have to create it.

When the *Copyright Act* was amended in 1997, Parliament created an ephemeral recording exception to the Act, generally permitting the making of ephemeral copies of performances under certain specified terms and conditions. This exception, however, was very narrow; more importantly, it would not apply if "a licence is available from a collective society to make the fixation or reproduction of the performer's performance, work, or sound recording".[19] This meant that television and radio stations can make ephemeral copies unless a collective representing the copyright owners asked to be paid for these copies.

Quite naturally, collectives representing music rights holders were established and then sought new tariffs for the reproduction of their works. The new tariffs subsequently established by Copyright Board Canada make broadcasters liable for an additional royalty payment for making the ephemeral recordings.

Not surprisingly, however, the establishment of these new tariffs for ephemeral reproductions were resisted by broadcasters, who suggested that in addition to adding another onerous royalty provision, the exception did little to balance the interests between right holders and broadcasters and effectively negated any meaningful benefit offered to broadcasters by the ephemeral recording exception amendments.[20] The broadcasters stated the temporary recordings — made only to facilitate broadcast use of programming that had already been paid for — held no secondary commercial value to broadcasters and did no harm to the rights owner.

This argument may have particular resonance with respect to commercial radio broadcasts of music. Commercial radio stations pay royalties to performing rights and neighbouring rights collectives whenever they play music over the radio. In order to facilitate broadcast, stations will upload an individual music CD onto the station's server or copy an older, vinyl recording to CD and then upload that. This is done entirely for convenience in light of the modern technology used in broadcasting sound recordings; indeed, the days of spinning turntables live in radio stations are long gone.

However, this act of uploading a CD (called a "transfer of medium" and permitted as an exemption under the *Copyright Act*) constitutes the creation of an ephemeral copy and thus the need for a further royalty payment to a reproduction rights collective. Committee members witnessed a demonstration of this process on their visit to CJAD Radio in Montréal. It is worth noting that the transfer of medium exemption exists as a very narrow exception to the *Copyright Act* and the licence to make an ephemeral copy is limited to a particular composition rather than the entire music CD. That means that if a CD contains 10 songs, broadcasters must obtain permission and pay royalties to copy each individual tune.

This transfer of medium exemption remains a point of contention between broadcasters and copyright holder collectives. Broadcasters continue to call for legislative change to the need for a royalty to be paid to reproduction collectives, citing the fact that they already own the work being copied and have already paid for the right to play it. The Canadian Association of Broadcasters made this assertion in both its brief and presentation to the Heritage Committee, as did other private broadcasters.[21] Although they made no formal submissions to the Standing Committee on Canadian Heritage, copyright collectives continue to assert their right to charge royalties on reproductions of recordings as a process separate from their broadcast.

H. Conclusion

The Committee is very much aware that the intersection of digital technology and copyright law raises significant issues, including such major topics as Internet retransmission and the creation of temporary or ephemeral copies of material to facilitate broadcasting. Section 92 of the current *Copyright Act* calls for a mandatory review of the legislation within five years of its coming into force in 1997, and for the study of that review by a parliamentary committee. In October 2002, the review entitled *Supporting Culture and Innovation: Report on the Provisions and Operation of the Copyright Act*[22] was completed and has been referred to the House of Commons Standing Committee on Canadian Heritage for study.

Given that the House of Commons Standing Committee on Canadian Heritage has been tasked to embark on this study, with a particular emphasis on copyright in the face of rapid technological change, the Committee felt it wise to refrain from specific recommendations in this report. That being said:

> **The Committee recognizes the pressing need for copyright reform in the digital age and intends to address all relevant broadcasting issues during its forthcoming statutory review of the *Copyright Act*.**

Endnotes

[1] A "distant broadcast signal" is simply one that cannot be received off the air with a rabbit ear antenna because the location from which it originates is too far away.

[2] Susan Peacock, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002.

[3] See, for example, the evidence of William Daly, Executive Vice-President and Chief Legal Officer, National Hockey League, Meeting of the Standing Committee on Canadian Heritage, 6 June 2002; Susan Peacock, Vice-President, Canadian Motion Picture Distributors Association, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002; and Brian Robertson, President, Canadian Recording Industry Association, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002.

[4] Canadian Association of Broadcasters, Brief, 10 September 2001, p. 22.

[5] Public Notice CRTC 1999-84.

[6] The CRTC's new media decision is discussed in Chapter 14.

[7] Farrell Miller, President, JumpTV, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002.

[8] Ibid.

[9] See the evidence of Chris Herringshaw, Founder and Chief Technology Officer, Quova Inc., and Larry Korba, Group Leader, Network Computing, National Research Council of Canada, Meeting of the Standing Committee on Canadian Heritage, 11 June 2002.

[10] See, for example, the evidence of Ken Thompson, Vice-President and General Counsel, Canadian Recording Industry Association, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002; William Daly, Executive Vice-President and Chief Legal Officer, National Hockey League, Meeting of the Standing Committee on Canadian Heritage, 6 June 2002; and Ben Ivins, Senior Associate General Counsel, National Association of Broadcasters (U.S.), Meeting of the Standing Committee on Canadian Heritage, 30 May 2002.

[11] Farrell Miller, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002.

[12] William Daly, Meeting of the Standing Committee on Canadian Heritage, 6 June 2002. See also the evidence of Gregory Piasetzki, Legal Counsel, FWS Joint Sports Claimants Inc., and Jeff Pash, Executive Vice-President and General Counsel, National Football League, Meeting of the Standing Committee on Canadian Heritage, 6 June 2002.

[13] See, for example, the evidence of Paul Spurgeon, Vice-President, Legal Services and General Counsel, Society of Composers, Authors and Music Publishers of Canada, Meeting of the Standing Committee on Canadian Heritage, 30 May 2002. See also the evidence of Susan Peacock, Vice-President, Canadian Motion Picture Distributors Association, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002.

[14] Susan Peacock, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002.

[15] Letter to Michael Kergin, Canadian Ambassador to the United States, 4 June 2002.

[16] Public Notice CRTC 2003-2.

[17] D. Vaver, *Copyright Law* (Toronto: Irwin Law Inc., 2000), p. 30.

[18] *Télé-Métropole Inc. v. Bishop* (indexed as *Bishop v. Stevens*), [1990] 2 S.C.R. 467.

[19] Copyright Act, R.S. c. C-30, s. 30.8(8).

[20] See, for example, Canadian Association of Broadcasters, p. 22.

[21] See Canadian Association of Broadcasters, p.22, and evidence of Glenn O'Farrell, President and Chief Executive Officer, Canadian Association of Broadcasters, Meeting of the Standing Committee on Canadian Heritage, 21 March 2002. See also the evidence of Peter Miller, Vice-President, Planning and Regulatory Affairs, CHUM Television, Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[22] *Supporting Culture and Innovation: Report on the Provisions and Operation of the Copyright Act*, www.strategis.ic.gc.ca.

MAINTAINING A SINGLE SYSTEM

Chapter 14

The Internet

As noted in Chapters 3 and 4, ongoing innovations in communications technology have facilitated a convergence of various communications media (radio, music, newspapers, games, film, etc) on the Internet. This phenomenon has not only precipitated profound changes in the way people, particularly today's youth, communicate and access information, but has empowered citizens worldwide to bypass traditional communications sources to access various forms of content. In response, many countries, including Canada, have in recent years been debating the merits and drawbacks of "Internet regulation."

Internet regulation is a concept that covers a vast range of potential legislative landscape. As Professor Elizabeth Judge has pointed out, "'Internet regulation' is an umbrella term"[1] that may apply to and across a wide variety of different legislative areas. "A statute might regulate Internet actors, such as Internet service providers, Internet infrastructure, Internet content, or the application of traditional rights or causes of actions in the Internet context."[2] Moreover, the issue of jurisdiction — that is, which level of government has the power to legislate with respect to "Internet issues" — may present some challenges with respect to issues of governance and division of powers:

> Jurisdiction inhabits many discussions about Internet regulation. The reason why is that many observers think the Internet is "borderless." Concepts of personal and adjudicative jurisdiction rely on geographical location and physical contacts. Accordingly, it is thought, these concepts cannot easily be applied to cyberspace.[3]

Despite these preliminary concerns, some aspects of Internet regulation have emerged as relatively uncontested sites of federal jurisdiction. The only mode of communication that is specifically mentioned in the division of powers sections of the *Constitution Act, 1867* is "Telegraphs", which is given over to exclusive federal jurisdiction. Over time, court decisions have "extended the reference to telegraphs, so that s. 92(10) now includes telephone, radio, broadcast television and cable television within federal jurisdiction."[4]

The federal government thus has jurisdiction over broadcasting in Canada. As noted in Chapter 2, in 1968 Parliament created the Canadian

Radio-television and Telecommunications Commission, an independent public authority with a mandate to regulate and supervise all aspects of the Canadian broadcasting and telecommunications systems. The CRTC has had to respond to the rapid development of new broadcast and communications technologies; the Internet and new media are simply the latest in this evolutionary line.

Chapters 3 and 4 provided some background on the genesis of the Internet as a communications medium and the extent of its adoption by citizens throughout Canada and the world. In short, it was explained that the Internet is, technically, a set of rules for communicating over a computer network and is, in many respects, the electronic equivalent of a post office.[5]

Chapter 13 explained challenges to the existing copyright regime posed by those who wish to retransmit over-the-air radio and television signals via the Internet. As was seen, recent amendments to the *Copyright Act* have created a "carve out" which denies aspiring Internet broadcast distributors the right to claim a compulsory licence to rebroadcast the signals of over-the-air broadcasters.

This chapter discusses in more general terms some regulatory issues associated with the Internet's potential as a platform for the transmission of programs to audiences. To begin, background material on how existing laws and polices apply to the Internet is presented. Thereafter, a summary of what the Committee heard about Internet regulation is provided.

A. How Do Existing Laws and Policies Apply?

For nearly a decade, questions about the intersection of Internet and regulation have been raised. In a 1995 study of how Canada can best meet the challenges of the "information highway", for example, the Information Highway Advisory Council (the "Advisory Council") addressed many themes later raised during CRTC's 1998 hearings as well as this Committee's study.[6] These common threads include Canadian content issues and the applicability of existing laws and regulations to the Internet, particularly as they relate to the protection of copyright and intellectual property and the presence of illegal and offensive material on the Internet.[7]

Copyright

The 1995 Advisory Council study reviewed how the development of new technologies — especially digitalization and interactivity — would affect fundamental copyright issues. These new technologies make the illegal reproduction and global republication of copyrighted material far easier than it once was. Thus, the study noted that the potential for "piracy, or unauthorised use and reproduction of protected works and the consequent economic repercussions is a cause for concern for creators and producers."[8]

Noting the need to balance the rights of creators to benefit from the use of their works and the need of users to access and use those works, the Advisory Council recommended that the federal government adopt "principles to help stakeholders address issues raised by increased digitalization."[9] These principles included:

> … encouraging industry, creators and user communities to develop and implement an administrative and regulatory framework that is easily understood and implemented by all interested parties and not seen as a barrier to access or use of content on the Information Highway.[10]

Upon review of the right to distribute copyrighted material over the Internet, the Advisory Council found that:

> … the right to communicate to the public by telecommunications currently contained in the *Copyright Act* clearly applies to the electronic transmission of works to the public. *There is therefore no need to introduce any new rights, such as an electronic distribution right.*[11]
>
> The Advisory Council further concluded, based upon the evidence it received during its hearings, that:
>
> … the issues presenting the greatest challenge to develop a truly Canadian Information Highway with new Canadian products and services *were not legal or policy-related in nature, but administrative and technical.* In that regard, the industry believes the enforcement of copyright and the clearance of rights constitute a priority.[12]

The Advisory Council found that the existing legislative and policy framework to be "sufficiently flexible to provide the means of effectively enforcing copyright on the Information Highway and, at the same time, provide users with reasonable access to protected works."[13] Given this, it was its opinion that the most important role government could play was one of education in working with industry to develop a public education campaign to better inform users and creators on the use of copyright on the Internet.[14]

Illegal and Offensive Material

With respect to how best to address the issue of illegal and offensive material on the Internet, the Advisory Council noted that "the rule of law applies with equal force to the Information Highway."[15] This means that material that is prohibited by the *Criminal Code* — child pornography, obscenity or hate propaganda, for instance — is illegal in Canada regardless of its form of transmission or distribution.

A more difficult question concerns material that is offensive but legal. "Potentially offensive content can include sexually explicit material, graphic violence, or other content that may by considered offensive on social, religious, cultural or moral grounds."[16] Here enforcement issues are complicated by responsibilities that differ by jurisdiction:

> In Canada different levels of government have different responsibilities regarding control of content. Besides the enforcement of the *Criminal Code* and the *Canadian Charter of Rights and Freedoms*, the role of the federal government in matters related to expression is defined by the *Telecommunications Act*, the *Broadcasting Act* and the *Canadian Human Rights Act*. Provincial governments have film and video review boards that enforce local regulations, including the prohibition of certain content and the enforcement of age restrictions. Municipal governments have by-laws concerning the licensing and zoning of 'adult entertainment'.
>
> In a digital environment, problems of enforcement arise regarding jurisdictional boundaries. ... The right and ability to control information flowing into the home also demands serious consideration.[17]

Noting that these jurisdictional issues are further complicated by situations in which material that is considered offensive in one jurisdiction may be considered acceptable in another, the Advisory Council recognised the "need for bilateral and multilateral agreements at the international level, dealing with harmful or illegal communications on global networks."[18]

With respect to how best to address offensive but legal content, it was the Advisory Council's view that the federal government should initiate public education programs to raise awareness of the fact that the principle of law applies to computer-mediated communications, and should work with industry stakeholders to develop "a model code of ethics and practices reflecting community standards and to provide for community education programmes."[19]

Moreover, the federal government should establish a technical committee to:

> … identify technical solutions that will ensure that individuals … have the ability to select easily the content they want. (For example, passwords help ensure restricted access; user validation and certain payment mechanisms uphold age restrictions; adaptive filters on home personal computers screen out inappropriate violent or sexual content.)[20]

And to:

> … identify technical solutions that will ensure all material distributed via the Internet from Canadian sources can be attributed to a verifiable person and site. … Availability of this information must be subject to … expanded privacy guidelines.[21]

These public awareness, education, knowledge, technological solutions and industry self-regulation recommendations are repeated in the Information Highway Advisory Council's study of illegal and offensive Internet content published in the year 2000.[22]

The CRTC's New Media Decision

In July 1998, the CRTC called for comments on the "rapidly expanding and increasingly available range of communications services collectively referred to as 'new media'."[23] This request resulted in well over 1000 responses from interested parties across a wide range of issues, including submissions from individuals, groups, industries, multimedia companies and traditional broadcasting enterprises. The submissions received, information gathered and consultations engaged in resulted in the CRTC's much anticipated decision in May 1999 to exempt new media from broadcasting regulation; in other words, to *not regulate* the Internet.

The diversity of responses received by the CRTC reflected the diversity of communication services included under the term "new media." The products and services new media can refer to include, "but are not limited to, video games, CD-ROMs, electronic mail (e-mail), online paging services, faxing, electronic commerce, IP telephony, and services delivered over the World Wide Web and the Internet."[24] As a working definition of the term, the Commission stated that:

> New media can be described as encompassing, singly or in combination, and whether interactive or not, services and products that make use of video, audio, graphics and alphanumeric text; and involving, along with other, more traditional means of distribution digital delivery over networks interconnected on a local or global scale.[25]

In calling for comments and conducting its public consultations on the topic of new media, the Commission wanted to address the issue of whether new media transmissions constituted "broadcasting" within the meaning of the *Broadcasting Act*, and if so whether they should be regulated.

As defined in section 2(1) of the *Broadcasting Act*, "broadcasting" means:

> ... any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place.

The term "program", in turn, as defined by the Act, means:

> ... sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text.

It is this latter aspect of the definition of "program" that removes much new media content from broadcasting, since so much of the content available on the Internet consists predominantly of alphanumeric text rather than sounds or visual images. This means that Internet content that is alphanumeric text falls outside the scope of the *Broadcasting Act* and cannot be regulated by the CRTC.[26]

This left the issue of Internet content which predominately consists of video, audio, still images or some combination of them. First, the Commission observed that while information displayed or posted on the Internet can be considered to be publicly displayed, the Internet "is not in and of itself a 'public place' in the sense intended by the Act. Programs are not transmitted to cyberspace, but through it, and are received in a physical place, e.g. in an office or home."[27]

Next, to determine if programs are transmitted "for reception by the public" within the meaning of section 2(1) of the *Broadcasting Act*, the Commission considered it "important to distinguish between the ability to obtain Internet content 'on-demand' — the non-simultaneous characteristic of Internet services — and the ability of the end-user to 'customize', or interact with, the content itself to suit his or her own needs and interests."[28] Finding nothing in the Act requiring that transmissions be received by the public on a fixed schedule or simultaneously between various viewers, the Commission held that programs transmitted to the public "on demand" are transmitted "for reception by the public."[29]

However, this public aspect of reception falls away if the content has been customized by the end-user to such an extent that the end-user has an individual, one-on-one experience through the creation of their own uniquely tailored content. It is the Commission's view that this sort of content would not be considered "reception by the public"[30] and thus again be beyond the scope of the *Broadcasting Act*. It is the degree of customization that is of significance. Where end-users' experience with the program would be similar, if not the same, but for the ability to select different camera angles or points of view of a sporting event, for example, the content would constitute a transmission of the program for reception by the public and thus be "broadcasting".

Section 9(4) of the *Broadcasting Act* requires the Commission to exempt broadcasting undertakings from the licencing requirements of the Act where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1). Having reviewed and considered the various submissions the Commission was of the view that the Canadian new media industry is vibrant, highly competitive and successful without regulation, and "to impose licencing on new media would not contribute in any way to its development or to the benefits that it has brought to Canadian users, consumers and businesses."[31]

Thus in May 1999, the CRTC issued an "exemption order without terms or conditions in respect of all undertakings that are providing broadcasting services over the Internet, in whole or in part, in Canada."[32] To summarize the Commission's decision to this point, it held that:

> Material transmitted over the Internet that is predominantly alphanumeric text is by definition not broadcasting;
>
> Material transmitted over the Internet that is sufficiently customisable is not broadcasting; and
>
> The remaining content that does fall under the *Broadcasting Act* is to be exempted from regulation.[33]

Canadian Content on the Internet

In conducting its new media hearings, the CRTC was particularly interested in receiving comments on the availability and visibility of Canadian new media content on the Internet, and whether any incentives or regulatory measures were necessary "to prompt existing or new industry participants to develop, produce, promote and distribute Canadian new media content and services."[34] The Commission received a range of opinion on the issue of regulation, from those suggesting no regulation at all to direct funding and tax incentives as an alternative to regulation to calls for regulation as the only way to produce, promote and guarantee a Canadian presence on the Internet.

The CRTC determined that a strong Canadian presence already exists on the Internet, as evidenced by the "impressive number" of Canadian web sites already in existence, key partnerships between Internet service providers and content developers to generate Canadian content, the expansion of many traditional Canadian businesses to the Internet, and the availability of Internet search tools that make it easier to locate Canadian content.[35] Indeed, the Commission expressly addressed the amount of Canadian content on the Internet:

> Participants provided statistics indicating that Canadian web sites represent about 5% of all Internet web sites. The availability of a number of Canadian search engines provides relatively easy access

> to Canadian new media content. French-language content represents about 5% of total Internet content.[36]

Given this, the Commission stated that:

> … there is a significant amount of Canadian new media content and services available on the Internet today and ample business and market incentives for its continued production and distribution. In fact, many parties submitted that regulation would serve to hinder, not help, the production and distribution of Canadian new media content. Therefore, there is no policy rationale for the Commission to impose regulatory measures to stimulate the production and distribution of Canadian content.[37]

Further finding that there was no convincing evidence to suggest that visibility of Canadian content was a problem on the Internet, the Commission decided that there was no compelling policy rational for regulatory measures to support access to Canadian content on the Internet.[38]

Offensive and Illegal Content on the Internet

The issue of how best to deal with illegal, offensive and objectionable Internet content also attracted a great deal of commentary and opinion. Some participants noted that offensive and objectionable material can be easily accessed and disseminated via the Internet and that the Commission should regulate this type of content.[39] Other participants also felt CRTC or some other industry or agency regulation for illegal content should be in place as an alternative to the criminal justice system's lengthy and arduous process under existing *Criminal Code* provisions.[40] For example, one suggestion was to give additional powers to the Canadian Human Rights Commission to address the dissemination of hate propaganda over the Internet.

Other participants felt that the best way to approach offensive and objectionable Internet content would be through industry self-regulation and the development of stronger industry codes of conduct. It was suggested that these could be cooperative efforts between a variety of different partners in both the public and private sectors. It was also observed that content filtering software, designed to control access to or availability of objectionable content, is also a useful screening device.

As for illegal content on the Internet, it was the opinion of the majority of participants that existing Canadian laws of general application, along with self-regulatory initiatives, are a more appropriate means of dealing with this type of content than regulation under the *Broadcasting Act*. The wilful promotion of hatred, for example, is an offence under the *Criminal Code*.[41] Moreover, hate propaganda consists predominantly of alphanumeric text, and alphanumeric text is by definition not broadcasting within the meaning of the *Broadcasting Act* and thus is beyond the regulatory reach of the CRTC.

Child pornography and material that is obscene is illegal regardless of the mode of transmission, and Internet obscenity would be caught by the *Criminal Code* proscriptions dealing with making, publishing, distributing or circulating this material.[42] The Commission was of the opinion that the criminal law, together with the establishment of complaint lines, industry ombudsmen, international cooperative arrangements and increased education and awareness, are more appropriate means of addressing this and other illegal Internet content.[43]

B. What the Committee Heard

The findings of the CRTC in its comprehensive study of submissions on new media broadcasting regulation provide a useful point of reference for this Committee's study of the state of broadcasting in Canada. Many witnesses made direct reference to points made in the CRTC Broadcasting Public Notice 1999-84 regarding the proper approach to new media broadcasting.

Submissions to the Committee regarding regulation of the Internet as it relates to broadcasting focused on three issues: Canadian content, the ability of existing law and policies to apply to the Internet, and self-regulation on the part of Internet stakeholders. These issues, which were mostly arguments either in favour or against Internet regulation to encourage the production of Canadian content, will be examined in turn.

Arguments in Support of Regulation

One of the primary purposes of the *Broadcasting Act* is to maintain and enhance national identity and cultural sovereignty through encouraging the development of Canadian expression and displaying Canadian talent.[44]

Canadian content on the Internet, then, was of significant interest and concern to many who appeared before or submitted written material to the Committee.

Firm support for Internet regulation was articulated by Mr. Jacques Primeau, President, Association québécoise de l'industrie du disque, du spectacle et de la vidéo. In an eloquent statement to the Committee summarising the views and concerns of several pro-regulation parties, he urged that the CRTC decision to not regulate the Internet be revisited. In particular, he voiced concern about the ability to enhance and promote Canadian content in light of new technological developments in an increasingly global world. He stated:

> … one of the most useful things the [C]ommittee could do would be to concentrate on finding ways of regulating Internet broadcasting. … the decision not to regulate the Internet, which was taken by the CRTC in 1999, must be reviewed at all costs in light of new technological developments. …
>
> Of course, to regulate the Internet, we will have to come up with measures that are different from those attempted in the past. We will have to be creative to ensure that Internet regulations meet two requirements: firstly, those who distribute Internet services must be on the same footing as those who distribute cable television, satellite or other means. …
>
> Secondly, we should not simply punish but rather encourage initiatives by Canadian companies to promote Canadian talent on the Internet. I think that we should develop regulations to this effect.[45]

Mr. Jean-Pierre Lefebvre, President, Association des réalisateurs et des réalisatrices du Québec, also expressed a general need for Internet regulation in light of the overall objectives of the Canadian broadcasting policies:

> Canadian content is the raison d'être, the ultimate goal of our system. Legislation, policy, regulations, governor in council orders, monitoring activity and CRTC regulations all have the same objective: to ensure that all Canadian citizens have access to homegrown programming which reflects their reality, their values and their view of the world.

> We must never lose sight of this objective. Under the current review process it is important that everything be done to conserve and strengthen the measures which support the creation, funding, presentation and promotion of top-quality Canadian programming which meets the many needs of all Canadians.
>
> In this expanding universe, we must be resolutely proactive and determined to find our place. Extraordinary efforts must be made and we must work together to ensure that Canadian content remains available everywhere: on radio, conventional television, the Internet and on pay TV, as well as pay audio services and video on demand. [46]

Some witnesses were less certain that regulation to ensure Canadian content was the best way forward, but expressed a desire to revisit the CRTC's decision to leave the Internet unregulated. For example, Ms. Megan Williams, the National Director of the Canadian Conference of the Arts, told the Committee:

> We think the CRTC was premature in its decision to back away from its study of the Internet. We think it should keep a watching brief on how things are developing there and ensure that there is plenty of Canadian content on the Internet. We're not suggesting that the CRTC can regulate the Internet, but we think we can find ways to ensure that Canadian content is always there in both official languages.[47]

This view was echoed by Mr. Richard Paradis, President, Canadian Association of Film Distributors and Exporters, who suggested seeking public input on the idea of regulating the Internet. He further said that moves toward such regulation were only a matter of time given the global reach, international interconnectivity and financial importance of the Internet. For this reason:

> In the same way that the minister asked Canadians to put forward their views on what Canadian content should be, and what the definition of Canadian content should be in this new environment, we're all going to participate in the exercise. I think the government or minister could actually ask questions of the Canadian public. Do you think we should be regulating the Internet? What are your ideas on it? You could get some creativity and probably some good ideas.[48]

With respect to the challenges of regulating such a rapidly changing and global technology as the Internet, witnesses acknowledged the difficulty of such an undertaking but suggested that regulation could be and must be achieved. For example, Mr. Jacques Primeau, President, Association québécoise de l'industrie du disque, du spectacle et de la vidéo, said:

> The Canadian government not only can, but must, regulate broadcasting activities on the Internet. At stake is the sound financial health of the companies in the system, the protection and fair treatment of rights holders, such as providing Canadians with the same access to varied, quality and interesting Canadian cultural content.[49]

Mr. Peter Sandmark, National Director, Independent Film and Video Alliance, expressed support for Internet regulation to ensure Canadian content:

> The Independent Film and Video Alliance recommends that the standing committee strengthen the obligation for broadcasters to program works by Canadian independent film and video creators and the works of Canadian independent new media artists on the broadcasters' Internet sites.[50]

Issues related to Canadian content were not the only matters raised by witnesses favouring Internet regulation. Other suggestions included strengthening existing regulations or legislation to better protect copyright. For example, Ms. Anne-Marie DesRoches, Public Affairs Director, Union des artistes, had this to say to the Committee about the potential regulation of the Internet with regard to Internet service providers :

> In terms of regulation, ... we really must examine the area of co-regulation, regulation through contracts and the possibility of reaching a consensus, instead of always pointing the finger at someone else and not accepting responsibility ourselves. I think we must, as a society, take ourselves in hand and make every stakeholder responsible in terms of regulating the Internet.[51]

Another witness viewed the regulation of the Internet — at least insofar as the protection of copyright interests — as simply the necessary next step in the evolution of the technology. Ms. Francine Bertrand Venne, Director General, Société professionnelle des auteurs et des compositeurs du Québec, stated:

> I simply wanted to give you a few examples where government, regulation and legislation could serve as models. I'm thinking of cable companies, which for many years claimed they were simply carriers, like those who provide access to the Internet. But in time, given the fact that people were claiming copyrights, it was shown that they were copyright users and the cable companies and specialized stations were made to pay. We should take that situation as an example for the Internet and perhaps build certain bridges.[52]

Arguments Against Regulation

On the other hand, numerous witnesses appeared before the Committee to suggest that Internet regulation was not necessary. Ms. Susan Peacock, Vice-President, Canadian Motion Pictures Distributors Association, for example, said:

> Current broadcasting policy, insofar as it applies to the more conventional or traditional technologies, was based on spectrum scarcity and the high cost of producing and distributing content with mass appeal ... Whatever the basis for, or the evaluation of, broadcast regulations, many of the concerns that gave rise to them are no longer true. Some of these concerns will be alleviated by new technology, including the availability of [unlimited] shelf space ...[53]

Witnesses also stated that Canadian content could be and is being enhanced and promoted online in the absence of any regulations. Moreover, many witnesses advised the Committee that existing laws were adequate to address illegal and offensive Internet content issues.

A strong statement against Internet regulation came from Mr. Jay Thompson, President, Canadian Association of Internet Providers, who had this to say to the Committee about the interrelationship between Canadian broadcasting policy and the Internet:

> Mr. Chairman, the CRTC got it right in May 1999 when it decided not to try to impose broadcasting-style regulations on ISPs or Internet content providers. While some — even a growing amount — of Internet content might arguably fall within the definition of "programming" in the [A]ct, even if it were practically possible to apply Canadian content or other similar broadcasting rules to that content — which it isn't — there is no need to do so to meet the objectives of the *Broadcasting Act*. There is plenty of Canadian content of all kinds on the Internet. It's easily accessible and can be

> created and distributed by anyone with access to a computer and the Internet.
>
> Canada's broadcasting policy as set out in subsection 3(1) of the *Broadcasting Act* remains relevant and appropriate. The regulatory policy in subsection 5(2) already grants the CRTC the flexibility to adapt to scientific and technological change, and subsection 9(4) gives the commission the power to exempt from licensing or regulating where it's not necessary to do so to implement Canada's broadcasting policy. For every challenge the Internet poses to broadcasters and the Canadian broadcasting system there is a corresponding opportunity, which Canada's broadcasting community is increasingly exploiting, to their benefit and to the benefit of Canadian consumers.[54]

Several witnesses specifically addressed the issue of Canadian content on the Internet. Testimony indicated that Canadian content can be enhanced and promoted and will flourish in the absence of regulatory intervention. One witness told the Committee that providing Canadians with Canadian Internet content simply makes good business sense and that regulation is thus unnecessary:

> It's really a matter ... of looking at what consumers want ... Suffice it to say that Canadians certainly want Canadian content on their Internet service. We weren't obliged to provide it; we provide it because it makes good business sense.[55]

This view was reiterated by Mr. Jay Thompson, who said that:

> As for the content that does exist on the Internet, if you wanted any kind of Canadian content, you could access it. Information about municipalities, about museums, about cultural organizations, cultural activities — it's accessible. I'm being rather long-winded here on that particular piece of the question, but I would suggest that there's sufficient access to Canadian cultural content on the Internet already that we don't need to worry about regulating it to stimulate more or restrict access to other kind of content.[56]

The Committee heard that it is audience demand and market response that keeps Canadian content flourishing on the Internet in the absence of regulations:

> I think the clear conclusion is that increased investment in the broadcasting system by non-Canadians will strengthen, rather than harm, cultural industries and the broadcasting system itself. Remember, we weren't required to do this by any licensing condition or regulatory body; we did it because it made good business sense and that's what our Canadian consumers wanted.
>
> So I think the conclusion that Canadian content can flourish in a free market is confirmed by the current state of the Internet more generally. In the absence of Canadian ownership or content regulations, Canadian content is continuing to flourish, and Canadian content creators are continuing to thrive on the Internet.
>
> It was that conclusion that was the driving force behind the CRTC's 1999 decision to exempt new media Internet broadcasting from regulation under the *Broadcasting Act*. I think the conclusion is equally valid today. In the market-driven online world, our members demonstrate a clear preference for Internet content that is truly Canadian, overwhelmingly choosing Canadian over non-Canadian sources of news, sports, and financial information.
>
> I think it's important as well to recognize that the Internet makes Canadian content accessible to Internet users around the world.[57]

A variation of this view that Internet regulation is unnecessary from a business stance came from Mr. Richard Ward, Executive Director, Community Media Education Society. He stated that:

> Adapting to the Internet may be less of a shock for us than our grandparents experienced with the arrival of radio. The inventors of radio and television expected them to be used for education and public information, but today they are businesses first and foremost. The same is true of the Internet. Government doesn't need to regulate the Internet as long as government is willing to regulate business.
>
> Arguably, digital television is the same as Internet access. It's easy for digital television to interact with the Internet. If television is regulated, the Internet need not be. There might be a presumption that programmers flee regulation, but in many cases the opposite is true, particularly when independent producers face established businesses so massive as to remove any likelihood of successful competition.[58]

In response to concerns about the lack of government regulation and the difficulties this could create, one witness spoke to industry self-regulation measures already in place:

> We at our association, the Canadian Association of Internet Providers, introduced a code of conduct for our members back in 1996. We're in fact one of the first Internet associations in the world to introduce such a code of conduct. Amongst other things, that code provides that our members will not knowingly host any illegal content. Once we're advised by proper authorities that any content that is on our servers is contrary to Canadian law, we will remove that content.
>
> Now, with respect to content that is not illegal, we're not in the position of regulating our users' tastes. Notwithstanding that some of the material, indeed a lot of the material, on the Internet can be offensive — even highly offensive — to many people, if it's not illegal, it's not illegal.[59]

Following the same path as the recommendations of both the 1995 and 2000 studies by the Information Highway Advisory Council and the 1999 CRTC decision not to regulate the Internet (discussed above), witnesses to the Committee expressed the view that existing Canadian legislation was sufficient to deal with illegal online content. Here, for example, Mr. Jay Thompson stated simply that:

> Canadian laws that apply off-line apply equally online. Anything that is illegal in the off-line world will be illegal if it's transmitted or carried out in the online world. We at our organization were very supportive of Bill C-15A and introducing clarification that child pornography on the Internet is a crime. The laws apply to the Internet, and they can be applied in a way that will affect the availability of that kind of content.[60]

Similarly, it was suggested that strengthening and enhancing existing law to deal with online copyright issues, as opposed to passing Internet-specific legislation, would be sufficient to protect rights-holders:

> Changes to the *Copyright Act* might be able to clarify who is liable and under what circumstances, with respect to transmissions on the Internet. Nevertheless, the outstanding issue is how to enforce and protect those rights. In order to do that, we need to turn back to the industry itself and technology. The industry creators, producers and

> broadcasters recognize they need to have a way to control the distribution of their products. They're introducing new technologies to add what are called digital watermarks on their programs — other means of restricting either access or download capability. But these are all being addressed by the industries themselves, through technology. So I don't see it as a problem. It's a challenge, but I think the programming and broadcasting industry is up to that challenge.[61]

This view was reinforced by witnesses appearing before the Committee to discuss the relationship between copyright issues and Internet retransmission — that is, the retransmission of television broadcasts over the Internet. Indeed, as already noted in Chapter 11, most witness concerns raised with respect to Internet retransmission and copyright focussed on the ease with which copyrighted material could be distributed worldwide over the Internet without the appropriate royalties being paid.[62] This is why some witnesses so forcefully resisted any extension of the compulsory licence to Internet retransmitters.

As noted earlier on, the issue of Internet retransmission is now moot given that Parliament amended the *Copyright Act* in 2002 to create an "Internet carve-out", specifically excluding Internet broadcasters from eligibility for the necessary compulsory licence to legally broadcast programming material over the Internet. That said, in July 2002 the CRTC launched a review of this particular issue, with a call for comments concerning Internet retransmission, seeking public input on "the appropriateness of amending the Exemption Order for New Media Broadcasting Undertakings … regarding persons who retransmit by the Internet, the signals of over-the-air television or radio programming."[63]

In its report to the Governor General in Council in January 2003, the CRTC restated its position that "it does not consider it necessary or appropriate to require the licencing of internet retransmitters."[64]

C. Conclusion

The Committee is of the view that broadcasting in whatever format and however carried falls within the jurisdiction of the *Broadcasting Act* and under the regulatory purview of the CRTC. Thus, broadcasting by new media services is

> **unquestionably within the purview of both the *Broadcasting Act* and the CRTC.**

The Committee is fully aware that new media services, a format which includes but is not limited to the Internet, are and will continue to be increasingly significant aspects of the digital and technological revolution as it affects broadcasting. The Committee is also aware that the 1999 CRTC decision to not regulate new media activities on the Internet under the *Broadcasting Act* is in need of further examination in light of ongoing innovations and advances in technology.

It is the CRTC's current practice, however, to review its own exemption orders approximately every five years.[65] This means that the 1999 new media exemption order will be before the CRTC for a complete review in 2004. Given this, **the Committee believes that any recommendations made now with respect to new media broadcasting would be premature in light of the planned and specific review in one year's time.**

Endnotes

[1] E. F. Judge, "Communications: Distribution of Powers in the Internet Age," in J.E. Magnet (ed.) *Constitutional Law of Canada* (Edmonton: Juriliber, 2001), p. 716.

[2] Ibid.

[3] Ibid.

[4] Ibid, p. 717. See, for example, *Toronto* v. *Bell Telephone Co.*, [1905] A.C. 52 (telephone); *Radio Reference*, [1932] A.C. 304 (radio); *Capital Cities Communications* v. *CRTC*, [1978] 2 S.C.R. 141 (broadcast television) and *Public Service Board* v. *Dionne*, [1978] 2 S.C.R. 191 (cable television). All these undertakings have been determined to fall within federal legislative jurisdiction.

[5] In technical terms Internet content (such as a message or data) is divided into small packets (one might think of them as a set of different envelopes) and sent to its intended destination. The route packets travel is determined by traffic on network of computers connected to the Internet. If one route is too busy, packets are sent through less busy channels. This means that an e-mail sent from Halifax, Nova Scotia to Cranbrook, British Columbia could easily have some of its packets sent through Toronto, Winnipeg and Calgary, while others travel through New York, Chicago, Seattle or Vancouver. It does not matter if the packets follow different routes; it all happens so quickly that the packets arrive at their destination within seconds of each other.

[6] *Connection, Community, Content: The Challenge of the Information Highway*. Final Report of the Information Highway Advisory Council (Ottawa: Minister of Supply and Services, 1995).

[7] How best to address illegal and offensive Internet content has also been the subject of such other studies as the Advisory Council's review of this material in the year 2000: *Illegal and Offensive Content on the Internet: The Canadian Strategy to Promote Safe, Wise and Responsible Internet Use* (Ottawa: Industry Canada, 2000).

[8] *Connection, Community, Content*, p. 35.

[9] Ibid, p. 112.

[10] Ibid, p. 113.

[11] Ibid, p. 118. Emphasis added.

[12] Ibid, p. 38. Emphasis added.

[13] Ibid.

[14] Ibid, p. 118-119.

[15] Ibid, p. 48.

[16] *Illegal and Offensive Content.*

[17] *Connection, Community, Content*, p. 132.

[18] Ibid, p. 48-49.

[19] Ibid, p. 133.

[20] Ibid, p. 134.

[21] Ibid.

[22] *Illegal and Offensive Content.*

[23] Public Notice CRTC 1999-84.

[24] Ibid.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Ibid.

[29] Ibid.

[30] Ibid.

[31] Ibid.

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Ibid.

[39] Ibid.

[40] Ibid.

[41] *Criminal Code* (R.S. 1985, c. C-46), section 319(2).

[42] Ibid, section 163(8).

[43] Public Notice CRTC 1999-84.

[44] *Broadcasting Act*, 1991, c. 11, sections 3(1)(*b*) and (*d*)(ii).

[45] Meeting of the Standing Committee on Canadian Heritage, 16 April 2002.

[46] Ibid.

[47] Meeting of the Standing Committee on Canadian Heritage, 23 April 2002.

[48] Meeting of the Standing Committee on Canadian Heritage, 16 April 2002.

[49] Ibid.

[50] Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[51] Meeting of the Standing Committee on Canadian Heritage, 16 April 2002.

[52] Ibid.

[53] Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[54] Meeting of the Standing Committee on Canadian Heritage, 31 January 2002.

[55] Meeting of the Standing Committee on Canadian Heritage, 12 March 2002.

[56] Meeting of the Standing Committee on Canadian Heritage, 31 January 2002.

[57] Ian Hembery, Vice-President, Government Relations and Communications, AOL Canada, Meeting of the Standing Committee on Canadian Heritage, 12 March 2002.

[58] Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[59] Jay Thompson, Meeting of the Standing Committee on Canadian Heritage, 31 January 2002.

[60] Ibid.

[61] Ibid.

[62] See, for example, the evidence of Paul Spurgeon, Vice-President, Legal Services and General Counsel, Society of Composers, Authors and Music Publishers of Canada, Meeting of the Standing Committee on Canadian Heritage, 30 May 2002. See also the evidence of Susan Peacock, Vice-President, Canadian Motion Picture Distributors Association, Meeting of the Standing Committee on Canadian Heritage, 4 June 2002.

[63] Public Notice CRTC 2002-38.

[64] Public Notice CRTC 2003-2.

[65] Ibid.

MAINTAINING A SINGLE SYSTEM

Chapter 15

Accessibility

Section 3 of the *Broadcasting Act* states that "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose."[1] This particular section was added in response to a recommendation made by the Standing Committee on Communications and Culture in 1987 in its report on the Canadian broadcasting system.[2]

For people who are hearing or visually impaired, this access is accommodated through several different formats. Closed captioning assists the deaf or hearing impaired. Audio description and descriptive video services (DVS), or described video programming as it is sometimes called, assist the blind or visually impaired, as does the National Broadcast Reading Service (VoicePrint) and *La Magnétotèque*.

The proliferation of channels and the presence of three distinct distribution mechanisms (conventional, cable, satellite), however, has raised important difficulties concerning delivery of services to persons with disabilities. This chapter reviews what the Committee heard concerning programming accessibility for the hearing and visually impaired. It also discusses another access issue, namely the expense of participation in broadcasting hearings.

A. Closed Captioning

Since at least 1995, the CRTC has made specific requirements for captioning as a condition of granting or renewing broadcast licences. These requirements differ according to the size of the broadcaster and the language of delivery.

English-language television stations are separated into three categories: large, medium and small. Large stations are defined as those earning more than $10 million in annual advertising revenues and network payments. This includes CBC, CTV and Global. These broadcasters have been required, since 1 September 1998, to caption at least 90% of all programming during the broadcast day, as well as all local news, including live segments.[3] Medium-sized stations, (those earning between $5 and

$10 million in annual advertising revenues and network payments) are expected to meet the same standards as large stations.[4] Small stations (earning under $5 million in annual revenues and network payments) are encouraged to work towards large-station captioning standards as well.[5]

As for French-language television stations, since 1999, the CRTC has expected broadcasters to move towards achieving the same levels of captioning as English language broadcasters, and has been "exploring this with individual broadcasters at licence renewal time."[6] Moreover, in 2001, the CRTC held that the largest French language private broadcaster, TVA, must, by September 2004, caption 100% of all news and, by 2007, 90% of all programming as a condition of its licence.[7]

What is Closed Captioning?

Captioning is a method used to make television broadcasting available to persons who are deaf or hard of hearing. This is achieved by the use of subtitles that appear on the television screen as a written transcript of dialogue and other meaningful sound effects on a television program. Captioning can be either "open" or "closed". Open captioning refers to that which is accessible to all viewers, and closed captioning refers to that which is accessible only to those viewers using a television equipped with a computer chip to decode the captioning signals embedded within the broadcast signal. Virtually all televisions manufactured within the past 10 years are equipped with such a decoding chip.[8] Closed captioning may be toggled off or on, as the viewer wishes. It is estimated that about 15% of the Canadian population has some form of hearing loss.[9]

Pre-packaged captioning and real-time captioning

Captioning of television broadcasts may be prepared in advance of broadcast ("pre-packaged" captioning) or occur simultaneously with the broadcast images ("realtime" captioning).

The process for providing pre-packaged captioning is much like having a document translated from one language into another. A video copy of the material to be broadcast is provided to the captionist, who watches the tape, listens to the audio and inserts the captions. The tape may be stopped and replayed for clarity, and the positioning of the captions may be adjusted so as not to interfere with the images on the screen. The captions are then edited to correspond with the images by use of time signals and inserted into the broadcast signal and the audio and video signals are saved together for later broadcast. Pre-packaged captioning, which provides the greatest accuracy in the finished product, is the most time-consuming and costly method of captioning, costing approximately $1,000 for one hour of program captioning.[10]

Real-time captioning, on the other hand, occurs as the images are broadcast live. Television news and live sporting event broadcasts are good examples of this; clearly, these are formats completely unsuitable for pre-packaged captioning.

In real-time captioning, a stenographer provides the captioning while the images unfold onscreen. This is a less expensive method than pre-programmed captioning, costing approximately $140 for one hour of programming.[11] However, as it does not have the benefit of time and editing, it sometimes suffers for accuracy, spelling errors, missed dialogue, loss of content as the images on the screen can sometimes outpace the captionist's speed and the possible interference of the captioning over the on-screen images, obscuring, for example, the speaker of the on-screen dialogue. Moreover, any technical problems either with the broadcast or captioning devices will necessarily compromise the ability to provide on-the-fly captioning, thus impeding viewers' ability to read what they cannot hear.

The Technology

Captioning technology has evolved over time and differs as between preprogrammed captioning and real-time captioning.

There are two systems that may be used for pre-programmed captioning, although one, Cheetah Systems captioning, is no longer in use in Canada. The other, the Rogers Canada system, is capable of captioning all pre-packaged content in Canada.[12]

Captionists providing real-time captioning use phonetic shorthand on a stenography keyboard, much like the machines used by court reporters. These machines are unique in that the keys correspond to sounds rather than individual letters.

French- and English-language captioning

Witnesses told the Committee that English language captioning tends to be superior to that of French language captioning, and there are significant differences between pre-programmed captioning and real-time captioning.[13] Some of the reasons for this are market driven, and more particularly a function of the large presence the United States has in both the captioning of programs and the sheer number of English-language programs produced annually. Moreover, the U.S. federal Department of Education has provided much funding for captioning itself.[14]

Difficulty with French captioning lies in the technology used, which is based on an English-language model. In the case of real-time captioning, the hardware must be remapped with French phonology to accommodate accents and other characteristics of the French language not present in the English language. Currently, there are two different systems that can accomplish this on English language hardware. One system, co-developed by a Canadian at a captioning company, has every accent available in the caption decoder font.[15] A competing system has been developed by la Société Radio-Canada and is, according to one witness, "technically inferior" to the other system in that the SRC system can only use the lower case accented character "é" despite it being technically possible to use many more accents than that.[16]

Linguistics presents another challenge with respect to French real-time captioning. The French language requires gender and number agreements which must be complied with and which may lead to errors in the captioning of live broadcasts. Additionally, as one witness explained, because the French language in general uses more words per sentence than does English, it sometimes compromises a captionist's ability to keep pace with live events as they unfold onscreen.[17]

Thus viewers who rely on French language real-time captioning are sometimes frustrated with the quality of the captioning.

Training captionists

The delivery of captioning, and particularly real-time captioning in French, suffers from a lack of trained captioners in Canada. The Committee heard witness testimony directly on this point:

> There's a distinct shortage of trained real-time captioners in French around the world, because the system is new. It has been adapted to the English hardware, after all. There are some in France. There are some in Québec. There aren't enough.
>
> There are no legitimate training programs for machine-aided stenography in the French language, as there are in English. Canada has a very good source for English-language-court-reporting training, but there are no such schools for French-language court reporting.[18]

This witness suggested that French language captioning would be improved by the creation and support of better training regimes for French real-time captioners.[19]

The Reality

Although both the *Broadcasting Act* and CRTC policies contain clear language expressing the need and desirability for the captioning of television programs broadcast in Canada, witness testimony before the Committee suggested that the reality is rather different.

The Committee heard that the language used by the CRTC in some instances lacks force and clear direction. For example, it "persist[s] in merely encouraging — as distinct from requiring — broadcasters to provide minimal amounts of captioning."[20] This may be readily seen in the case of smaller English and French language broadcast stations, as noted above.

In some instances, captioning is treated as an afterthought and as a marginal and unnecessary element of the broadcast as a whole. The Committee heard one witness who had been looking forward to viewing a movie that had been advertised as having captioning. However, when the movie was run, it was without the captioning. When this witnessed pressed the broadcaster for an explanation, he was told that the movie had been received with the wrong captioning track and that it was broadcast as scheduled but without the advertised captioning. He told the Committee:

> Now I ask you, if it had been the audio track that was the wrong programming, would they have gone ahead and broadcast the

> movie with the wrong audio track? Would they? No, they wouldn't. But they didn't care about broadcasting without a captioning track.[21]

As mentioned above, the CRTC has made it a requirement of broadcast licences that a certain proportion of all programming during the broadcast day be captioned. The CRTC defines "broadcast day" as "the period of up to 18 consecutive hours, beginning each day not earlier than six o'clock in the morning and ending not later than one o'clock in the morning of the following day, as selected by the licensee."[22]

The Committee heard that this 18-hour limitation of a broadcast day further marginalizes captioning and, by extension, those who rely on it:

> Are all deaf people supposed to go to bed at midnight? We're not allowed to stay up and watch a late movie? Who made that decision? Who said deaf people only live 18-hour days? We live 24-hour days like everybody else. We want 24-hour regulation of captioning.[23]

The Committee also heard that the CRTC does not adequately enforce its own policies and that broadcasters need not fear reprisal should they not adhere to the captioning requirements, expectations or encouragements[24] of their broadcast licences. One witness told the committee that:

> Nothing untoward will happen to you if you're a broadcaster and do not meet requirements for captioning or description. There has never been a case in which any broadcaster has ever been meaningfully punished for failing to live up to captioning or description requirements. It simply doesn't happen.[25]

This was echoed by another witness, who said that:

> It's widely acknowledged that in its present incarnation, the CRTC is toothless and is unwilling to penalize licensees for their failure or refusal to meet licensing conditions. This kind of situation makes the CRTC bureaucratically pointless and ineffectual.[26]

This gives the unfortunate appearance of indifference to the community which relies on captioning. This appearance is exacerbated by limitations of the definition of "broadcasting day" and policy language that "expects" or "encourages" captioning rather than requiring it. The remedy, according to one witness, is that the CRTC:

> ... be given the power and the political support to take aggressive action wherever necessary. That could include forcing broadcasters off the air, at least temporarily, if they violate the conditions of their licensing.[27]

Absent such mandatory direction and punitive enforcement, there is evidence to suggest that some broadcasters will continue to resist full implementation of the captioning directives of their broadcast licence. In 2000, a complaint was heard before the Canadian Human Rights Tribunal alleging that the Canadian Broadcasting Corporation was failing to live up to the English-language captioning requirements under its broadcast licence.[28] As a large broadcaster, CBC is required to caption at least 90% of all programming during the broadcast day as well as all local news, including live segments.[29] It was alleged that the CBC's continuing failure to meet these requirements constituted discrimination on the basis of disability, an action contrary to the *Canadian Human Rights Act*.[30]

After hearing evidence on the matter, the Tribunal held that, due to lack of captioning, some CBC English-language network broadcasts, as well as those by CBC Newsworld, were not accessible to deaf or hard of hearing viewers, thus constituting a *prima facie* case of discrimination on the basis of disability.[31] The Tribunal also made note of evidence that the technology currently exists to caption everything broadcast on television:

> The CBC claimed that providing the captioning they were obliged to provide as a condition of their licence would constitute an undue hardship and offered financial evidence to sustain this position. The Tribunal dismissed this claim, concluding from the CBC's own evidence that the estimated cost of full captioning would total less than1% of the CBC's annual budget — an amount insufficient to constitute an undue hardship on the [C]orporation.[32]

Indeed, the Tribunal stated that:

> ... after considering all of the evidence adduced by the CBC in this case, I was left with the overwhelming impression that, although significant improvements to the level of captioning have been implemented in recent years, with a little corporate will and imagination, a good deal more could be done with respect to captioning without imposing an undue hardship on the CBC than has thus far taken place.[33]

The Tribunal then ordered that the CBC English-language network and Newsworld "caption all of their television programming, including television shows, commercials, promos and unscheduled news flashes, from sign on until sign off. This must occur on the first reasonable occasion."[34] The Tribunal also "strongly encourage[d] the CBC to consult with representatives of the deaf and hard of hearing community on an ongoing basis with respect to the delivery of captioning services."[35]

This decision was warmly received by the deaf and hard of hearing communities as a long-awaited vindication of their rights. The CBC has appealed the decision of the Canadian Human Rights Tribunal and the case is still in progress at the time of writing.

B. Services for the Visually Impaired

Audio Description for Visually Impaired Viewers

Audio description for blind or visually impaired viewers is a form of basic voice-over that describes the textual or graphic information that is displayed onscreen. This sort of service, for example, has someone reading aloud weather reports or sports scores as they appear on the television screen.

The CRTC has set regulations for the availability of this service. In its 1999 Policy Framework for Canadian Television, the CRTC stated that:

> Licensees are strongly encouraged to adapt their programming to include audio description wherever it is appropriate and to take the necessary steps to ensure that their customer service responds to the needs of the visually impaired.[36]

Building on this policy statement, beginning in 2001-02, CTV and Global were expected to provide audio description as part of their licence renewal agreements. In its licence renewal decision for television stations owned by CTV, the CRTC stated:

> CTV indicated that it is committed to its general practice of providing audio description of important graphic information. It conveys all emergency information, such as weather warnings, in audio form as well as in video form. The Commission notes this

> commitment, and expects CTV to ensure that it provides audio description where appropriate. It further expects the licensee to take the necessary steps to ensure that its service responds to the needs of visually impaired audiences.[37]

Global's licence contains a similar clause concerning the provision of descriptive audio and the CRTC's requirement for such service is identical, though specific to each network:

> Global confirmed that its policy is to reinforce a program's textual and graphic elements, such as the presentation of regular weather forecasts, sports scores, addresses, and telephone numbers, with an oral description. The Commission notes this commitment, and expects Global to ensure that it provides audio description where appropriate. It further expects the licensee to take the necessary steps to ensure that its service responds to the needs of visually impaired audiences.[38]

Thus, these networks are expected to provide audio description wherever it is appropriate. There are no specific requirements as to the number of broadcast hours expected to have the descriptive audio service available.

Descriptive Video Service for Visually Impaired Viewers

This service consists of a narrated description of key visual elements as they appear on screen. The purpose of this narrative is to give a visually impaired viewer a mental picture of what is happening on the screen. The description is timed so that it does not interfere with the on-screen dialogue. The descriptive video service is normally provided on the second audio program (SAP) channel. This second audio channel exists as an alternative to the standard audio that normally accompanies the video portion of the television program. Listeners can then choose to receive this second audio channel through either a special decoder or a television set or VCR equipped to receive SAP.

In a 1999 policy statement, the CRTC said that:

> With respect to descriptive video services (DVS), the Commission concludes that it is premature to impose specific requirements on licensees at this time. The Commission encourages licensees and

> the National Broadcast Reading Service to continue to cooperate in order to effect the gradual implementation of DVS.
>
> The Commission, at licence renewal, will explore with licensees the progress that has been made in meeting the needs of the visually impaired.
>
> The Commission considered issues related to DVS during a proceeding concerning to the addition of a third national television network (PN 1998-8). The Commission's approach has been to support in principle, the gradual implementation of DVS.[39]

This gradual implementation process is clearly seen in the 2000 renewal of CBC's English- and French-language licences, in which the statement that "it is premature to impose specific requirements on licencees" is repeated.[40] The CRTC then stated in the terms and conditions of both English and French language licences that it "**encourages** the Corporation to continue to develop the use of DVS, and to cooperate with the National Broadcast Reading Service in order to effect the gradual implementation of DVS."[41]

Following on this, the CRTC has begun to "require" descriptive video services as part of broadcast licence renewal applications. In CTV's 2001 licence renewal, the CRTC imposed specific conditions of licence:

> ... on each CTV station relating to the provision of described video. The condition requires CTV's largest stations (in Toronto, Ottawa and Vancouver) to broadcast, between 7 p.m. and 11 p.m., an average of two hours per week of described video programming during the first two years of the licence term. All of CTV's stations are required to provide three hours per week in year three, and four hours per week in year five. A minimum of 50% of the hours must be original broadcasts. This programming must be Canadian and be from categories 2(*b*) and 7. The licensee may, however, count toward fulfilment of this condition a maximum of one hour per week of described video programming that is directed to children and broadcast during an appropriate children's viewing time.
>
> The Commission further expects CTV, wherever possible, to acquire and exhibit described versions of the Canadian and non-Canadian programming that its stations broadcast. It notes that some American programs already include descriptions in order to fulfil requirements in this area that are in effect in the United States. Finally, the Commission commends the licensee for making

> concrete proposals with respect to the broadcast of programming that includes described video. The Commission considers that the presence of such programming in the Canadian broadcasting system is an important contribution.[42]

As part of its 2001 licence renewal, the CRTC imposed a similar

> ... condition of licence on each Global station relating to the provision of described video. The condition requires Global's largest stations (in Ontario, Vancouver and Quebec) to broadcast, between 7:00 p.m. and 11 p.m., an average of two hours per week of described video programming during the first two years of the licence term. All of Global's stations are required to provide three hours per week in year three, and four hours per week in year five. This programming must be Canadian and be from categories 2(*b*) and 7. A minimum of 50% of the hours must be original broadcasts. The licensee may, however, count toward fulfilment of this condition a maximum of one hour per week of described video programming that is directed to children and broadcast at an appropriate children's viewing time.[43]

Global's licence also contains a statement of expectation that wherever possible the station should acquire and exhibit described versions of Canadian and non-Canadian programming.[44] Thus, both CTV and Global have specific requirements that must be met with respect to the provision of descriptive video services for visually impaired viewers.

TVA's licence renewal is slightly different. Here the CRTC stated that:

> The Commission expects the large station groups to demonstrate leadership in establishing descriptive video. With regard to CFTM-TV's market, the Commission expects TVA to provide, during peak viewing hours, DVS in accordance with the following timetable: Years 1 and 2: 2 hours/week; · Years 3 and 4: 3 hours/week; · Year 5 and following years: 4 hours/week.[45]

The Commission also "emphasizes that the number of hours allocated to DVS must not consist of more than 50% repeats."[46]

National Broadcast Reading Service (VoicePrint) and La Magnétotèque

VoicePrint and La Magnétotèque are 24-hour a day newspaper reading services that are delivered over a secondary audio programming (SAP) service. They provide full text reading of news, information, features and stories published by a variety of newspapers, magazines and periodicals. These services are distributed by cable television licensees with more than 2,000 subscribers, direct-to-home satellite providers such as Bell ExpressVu and Star Choice, and multipoint distribution systems such as Look TV, SkyCable and Image Wireless.[47]

C. Proposed Solutions

The Committee strongly believes that the present wording of section 3(*p*) of the *Broadcasting Act*, stating "programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose", is discriminatory. The qualifying phrase "as resources become available for the purpose" detracts from the statement of accessibility and leaves the impression that broadcasting that is accessible to disabled persons is of marginal importance. This erodes Canada's commitment to equality.

The Committee recognizes that closed captioning and descriptive video services are significant issues that must be addressed to give meaningful effect to the accessibility statement in section 3 of the *Broadcasting Act*. It is also aware that the Canadian Human Rights Tribunal in the case of *Vlug v. CBC*, stated that:

> [Broadcasters] shall caption all of their television programming, including television shows, commercials, promos and unscheduled news flashes, from sign on until sign off. As required by Section 53(2)(*b*) of the *Canadian Human Rights Act*, this must occur on the first reasonable occasion.

As such, the Committee strongly supports television broadcasting that is accessible to the hearing and visually impaired and encourages the broadcasting industry to work towards the better provision of this access. In addition, the Committee urges broadcasters to fully comply with their broadcasting licence requirements as stipulated by the CRTC.

The Committee notes that it is a condition of some broadcast licences that accessibility be provided. The Committee is aware of the substantial costs of providing programming that is accessible to all. With respect to closed captioning, some costs are covered when Canadian broadcasters purchase pre-captioned programming. In addition, sponsorship agreements in which advertisers assist with the cost of captioning a program in exchange for certain advertising rights also helps ease the cost of providing this service.

Despite this, many programs are not pre-captioned and thus must have it added prior to broadcast. Moreover, as an increasing number of new television channels become available, there is a corresponding rise in the need for broadcast material for those channels, and a need for such material to be captioned, if necessary.

With respect to French-language programs, this situation is exacerbated by a shortage of trained captionists in Canada, particularly French-language captionists. Nevertheless, the Committee is not persuaded that the cost of complying with broadcast licencing requirements for captioning as stipulated by the CRTC is overly burdensome or constitutes an undue hardship for broadcast licence holders. Accordingly, the Committee makes the following recommendations:

RECOMMENDATION 15.1:

The Committee recommends that section 3(*p*) of the *Broadcasting Act* be amended to read "programming accessible by disabled persons should be provided within the Canadian broadcasting system;" This amendment would remove the qualifying phrase "as resources become available for the purpose."

RECOMMENDATION 15.2:

The Committee recommends that a training program for closed captioning and descriptive video services be developed and funded by the federal government.

RECOMMENDATION 15.3:

The Committee recommends that the federal government develop a program to assist broadcasters in providing closed-captioning and descriptive video services.

RECOMMENDATION 15.4:

The Committee recommends that once the appropriate training and assistance programs are in place, that escalating conditions for the amount of captioning and descriptive video provided by broadcasters be phased in with a view to reaching a target of 100% for captioning and descriptive video services.

This assistance should include training programs, in both official languages. Absent a program to train an adequate number of individuals in both official languages, support for broadcasters in providing captioning and descriptive video services is illusory, and thus the overall objective of more comprehensive accessibility will be even more difficult to reach.

The Committee also recognizes that oversight will be key if targets are to be met. For this reason:

RECOMMENDATION 15.5:

The Committee recommends that the *Broadcasting Act* explicitly instruct the CRTC to set rigorous requirements and enforcement mechanisms to eliminate discriminatory practices by broadcasters. These instructions must explicitly include the requirement that captioning and descriptive video services be phased in for all television programming with a view to reaching a target of 100% captioning and video descriptive services.

D. Other Access Issues

The expense of participation in broadcasting hearings

The expense of participating in public hearings before boards and tribunals such as the Canadian Radio-television and Telecommunications Commission (CRTC) is a barrier to full and equal access to the process. Many of those who wish to appear before a board to express a viewpoint or make an intervention are deterred by the expense of doing so. This is contrary to the notion of public participation in a democratic society. It is particularly problematic when such barriers restrict full citizen involvement in public issues such as matters relating to broadcasting and local and national television. It is more troubling still given the Commission's role under section 3(*d*)(i) of the *Broadcasting Act* to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada." Public input is thus a crucial element of the process and barriers and financial disincentives to it especially disturbing.

At present, the *Broadcasting Act* does not provide for the recovery of costs by individuals or organizations who participate in public hearings before the CRTC. This is in contrast to the CRTC's powers under the *Telecommunications Act* to provide such relief. The same tribunal has differing powers under differing legislation to award costs to those who, in exercise of their democratic rights, appear before it. In the one case participants may be compensated for their costs and in the other they may not.

"Costs" in this context refers to a specified list of recoverable expenses that have been incurred by interveners who participate in a CRTC hearing. The CRTC has established guidelines for these expenses, which include the kind of fees and disbursements recoverable and at what rate. For example, fees paid for legal counsel, expert witnesses, consultants and analysts may be recovered at specified hourly rates. In addition, disbursements for travel, accommodation, meals and photocopying may also be recovered at specific rates. Other reasonable expenses may also be recovered at the Commission's discretion.[48]

Under the power given to it by the *Telecommunications Act*, the CRTC may order one party, typically a telecommunications company, to pay the costs of another party, typically an intervener representing a public interest in the matter under review. The underlying principle of paying costs is to compensate deserving interveners for the cost incurred by their intervention, based on the fair market value of the work performed. The funds come from budget of key industry interveners.

For the CRTC to require that a company pay another party's costs, the company must meet three criteria: it must come under the jurisdiction of the CRTC; it must have taken part in the process, and it must have been affected by the outcome.

In addition to the guidelines setting out the kinds of costs that can be recovered and the applicable rates, the CRTC has established Rules of

Procedure with respect to the awarding of costs under the *Telecommunications Act*. For example, not every participant who appears before the CRTC on a telecommunications matter is entitled to a cost award. To qualify for recovery of costs, participants must demonstrate that they are representative of a group of citizens, that they have participated in the proceedings in a responsible way, and that they have contributed substantially to a better understanding of the issues in question.[49] Once each of these tests have been passed, the CRTC then has the discretion to award all costs, some costs or none at all.

The Committee believes that amending the *Broadcasting Act* will further enhance the democratic process by helping to remove financial barriers to full participation. This is particularly significant when the Commission is considering such broadcasting and television issues as rate increases, licencing conditions of broadcasters, channel packaging, pricing, service and content matters that affect consumers directly. Impediments to consumer input and participation on these important issues must be removed.

Moreover, this balanced access is important given the imbalance between large media companies and individual consumers in terms of the resources each has to spend at hearings before the Commission. This gives an appearance of inequality of access that is inconsistent with the democratic process. Assisting interveners to recover some of their costs would help remedy this.

Reducing financial barriers also helps ensure equal representation between the various interested parties, thus providing the Commission with a clearer picture of the effect of the proposed decisions. Finally, removing barriers to greater citizen access will foster a more open, impartial and transparent process at hearings and lead to more informed decisions.

For these reasons, an amendment proposing that the *Broadcasting Act* include a provision for the awarding of costs to participants in hearings before the CRTC on broadcasting matters, and that the CRTC be given the power to create criteria in this respect, has been considered in the Senate of Canada as Bill S-8. This proposed amendment was given third reading and passed by the Senate on 2 April 2003 with the following text:

> 1. The *Broadcasting Act* is amended by adding the following after section 9:

9.1 (1) The Commission may award interim or final costs of and incidental to proceedings before it and may fix the amount of the costs or direct that the amount be taxed.

(2) The Commission may order by whom and to whom any costs are to be paid and by whom they are to be taxed, and may establish a scale for the taxation of costs.

2. Subsection 10(1) of the Act is amended by deleting the word "and" at the end of paragraph (*j*) and by adding the following paragraph:

(*j*.1) establishing the criteria for the awarding of costs; and

The Committee looks forward to receiving this bill. It recognizes the barriers restricting full citizen participation in public hearings due to the cost of access and supports the proposed amendment to the *Broadcasting Act* passed by the Senate of Canada on 2 April 2003 allowing for the recovery of intervener costs. It further notes that established guidelines already exist for this purpose for hearings before the CRTC on telecommunications matters. Therefore:

RECOMMENDATION 15.6:

The Committee recommends that the federal government amend the *Broadcasting Act* to enable the CRTC to make regulations establishing criteria for the awarding of intervener expenses to those applicants who need access to the Commission so that the voice of community concerns and challenges can be heard.

Endnotes

[1] *Broadcasting Act*, 1991, c.-11, section 3(1)(*p*).

[2] *A Broadcasting Policy for Canada*, Report of the Standing Committee on Communications and Culture (Ottawa: Minister of Supply and Services, 1988).

[3] Public Notice CRTC 1995-48. Emphasis in original.

[4] Ibid. Emphasis in original.

[5] Ibid. Emphasis in original.

[6] Canadian Radio-television and Telecommunications Commission. Consumer information, Ongoing Issues, Broadcasting Services for the Hearing and Visually Impaired, Captioning.

[7] Decision CRTC 2001-385.

[8] The American *Television Decoder Circuitry Act* of 1990 requires all television sets with screens 13 inches or larger sold in the United States to be equipped with captioning decoder chips. Canada benefits from this legislation because of the North America-wide manufacturing and retailing of television sets.

[9] James Roots, Executive Director, Canadian Association of the Deaf, Meeting of the Standing Committee on Canadian Heritage, 4 December 2001.

[10] *Vlug v. CBC*, (2000), 38 C.H.R.R. D/404 at paragraph 35. See also the evidence of Joe Clark, Meeting of the Standing Committee on Canadian Heritage, 23 April 2002.

[11] James Roots, Meeting of the Standing Committee on Canadian Heritage, 4 December 2001.

[12] Joe Clark, Meeting of the Standing Committee on Canadian Heritage, 23 April 2002.

[13] The CRTC has also acknowledged the challenges of French language captioning in light of technology developed for the English language market.

[14] James Roots, Meeting of the Standing Committee on Canadian Heritage, 4 December 2001. See also the evidence of Joe Clark, Meeting of the Standing Committee on Canadian Heritage, 23 April 2002.

[15] Joe Clark, ibid.

[16] Ibid.

[17] Ibid.

[18] Ibid. For further information on the state of training in Canada, see the evidence of the Standing Joint Committee on Official Languages, 3 June 2002, 4 June 2002 and 11 June 2002.

[19] Joe Clark, Meeting of the Standing Committee on Canadian Heritage, 23 April 2002.

[20] James Roots, Meeting of the Standing Committee on Canadian Heritage, 4 December 2001.

[21] Ibid.

[22] Television Broadcasting Regulations SOR/87-49, section 2.

[23] James Roots, Meeting of the Standing Committee on Canadian Heritage, 4 December 2001.

[24] See the language of Public Notice CRTC 1995-48.

[25] Joe Clark, Meeting of the Standing Committee on Canadian Heritage, 23 April 2002.

[26] James Roots, Executive Director, Canadian Association of the Deaf, Meeting of the Standing Committee on Canadian Heritage, 4 December 2001.

[27] Ibid.

[28] *Vlug v. CBC*.

[29] See Public Notice CRTC 1995-48.

[30] R.S. 1985, c. H-6, section 3(1).

[31] *Vlug v. CBC*.

[32] Ibid.

[33] Ibid.

[34] Ibid.

[35] Ibid.

[36] Public Notice CRTC 1999-97.

[37] Licence renewals for the television stations controlled by CTV, Decision CRTC 2001-457. Emphasis in original.

[38] Licence renewals for the television stations controlled by Global, Decision CRTC 2001-458. Emphasis in original.

[39] Public Notice CRTC 1999-97. Emphasis in original.

[40] Licences for CBC English-language television and radio renewed for a seven-year term, Decision CRTC 2000-1. Licences for CBC French-language television and radio renewed for a seven-year term, Decision CRTC 2000-2.

[41] Ibid. Emphasis in original.

[42] Licence renewals for the television stations controlled by CTV, Decision CRTC 2001-457. Emphasis in original.

[43] Licence renewals for the television stations controlled by Global, Decision CRTC 2001-458. Emphasis in original.

[44] Ibid.

[45] Licence renewals for the French-language national television network TVA and for the French-language television programming undertaking CFTM-TV Montréal, Decision CRTC 2001-385. Emphasis in original.

[46] Ibid.

[47] Decision CRTC 2000-380.

[48] Canadian Radio-television and Telecommunications Commission, "Guidelines for the Taxation of Costs," Revised as of 15 May 1998, www.crtc.gc.ca.

[49] Canadian Radio-television and Telecommunications Commission, *Telecommunications Rules of Procedure*, SOR/79-554, s. 44.

MAINTAINING A SINGLE SYSTEM

Chapter 16

The Black and Grey Satellite Market

As noted in Chapter 8, interest in and demand for satellite television services has been steadily growing in Canada in recent years. Satellite distributors in Canada now account for 1.7 million of the total 2.8 million, or over 60%, of all digital television customers.[1] The CRTC currently licences two suppliers to provide direct-to-home satellite television services to Canadians. Bell ExpressVu, the larger of the two, has approximately 1 million customers, and Star Choice, owned by Shaw Cable, has approximately 700,000 customers.[2] Together, over $2 billion has been invested in the provision of satellite services by the shareholders of Bell ExpressVu and Star Choice.[3]

Canadians generally cite access to a greater variety of channels as a primary reason for opting for satellite service. As well, in some rural areas cable access is difficult if not impossible, making satellite service an attractive and at times the only option.[4]

Both Bell ExpressVu and Star Choice use slightly different technology and are thus not compatible with one another, but both systems are equally compatible with present television sets as well as television sets using newer, digital technology.[5] Therefore, the choice of which satellite service Canadians wish to subscribe to is a matter of consumer choice, limited to one of two Canadian companies. No other North American company is licenced to provide satellite signals to Canadians.

A. The Technology

Satellite and broadcasting technology allows a television broadcaster to send a signal to a satellite located in orbit above the earth, and the satellite will send back the same signal covering a portion of the earth's surface (the signal's "footprint"). The technology thus allows a signal to be sent directly to any place that has a device for receiving the signal — hence the term "direct-to-home" (DTH) television.

In order to protect the commercial value of satellite television services, the signals are "encrypted" or scrambled by the broadcaster. To be received in intelligible form, the signal must be decoded or descrambled. If viewers wish to receive these signals they must subscribe to the channel or channels providing the signals. Upon purchasing the necessary hardware and paying a fee, the broadcaster will supply viewers with some form of authorization unique to the subscribers' decoder allowing them to receive the signals.

Canadian residents who subscribe to ExpressVu or Star Choice and who own an ExpressVu or Star Choice direct-to-home satellite television decoding system are authorized to decode the encrypted subscription programming signals transmitted by ExpressVu or Star Choice and view the programs for which they have subscribed.

Similar services operate in the United States. DirecTV and EchoStar are licenced by the U.S. Federal Communications Commission (FCC) and are authorized to have their encrypted programming signals viewed in the United States. Under FCC rules these U.S. signals are not authorized to be viewed outside the U.S.

The satellite signals sent by broadcasters, however, do not recognize international boundaries. As the footprint of the signal may cover a large area, it may also cover parts of two or more adjacent independent nations, such as Canada and the United States. With the necessary decoder and key, signals originating in one country may be received in another.

B. How Existing Laws Apply

The interplay among three pieces of federal legislation govern how satellite signals may be lawfully distributed in Canada: the Radiocommunication Act, and to lesser extents, the *Broadcasting Act* and the *Copyright Act*.

Section 9 of the Canadian *Radiocommunication Act* states that "no person shall ... decode an encrypted subscription programming signal or encrypted network feed otherwise than under and in accordance with an authorization from the lawful distributor of the signal or feed". For the purpose of this Act, a lawful distributor is a "person who has the lawful right in Canada to transmit [the signal] and authorize its decoding".[6] This means a CRTC licence holder — that is, Bell ExpressVu and Star Choice. Those in violation of section 9 may be subject to imprisonment or fines up to $75,000.

Section 2(1) of the *Broadcasting Act* defines "broadcasting" as "any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunications for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place".

Section 3 of the *Broadcasting Act* sets out the foundation of Canadian broadcasting policy, which has a clear cultural orientation. It states that the broadcasting system is a "public service essential to the maintenance and enhancement of national identity and cultural sovereignty" (3(1)(*b*)). It also enumerates a number of specific developmental goals for the broadcasting system in general and broadcasters in particular (3(1)(*d*) through (*t*)). It further states that "the Canadian broadcasting system constitutes a single system" best regulated and supervised "by a single independent public authority" (3(2)).

Lastly, the *Copyright Act* provides broadcasters with a copyright in the communication signals they transmit, granting them the sole right of retransmission (subject to the exceptions in s. 31(2)) and, in the case of a television communication signal, of performing it on payment of a fee. This prohibits the unauthorized reception of signals that violate copyright.

C. Why the Grey Market Exists

As mentioned above, a growing number of Canadians are subscribing to satellite television services in order to increase the number of television channels they can receive. However, despite access to over 350 channels on the Bell ExpressVu system, for instance, some Canadians prefer to obtain satellite signals from U.S. suppliers, citing wider choice and greater selection as their reasons. For example, although Bell ExpressVu offers many U.S. channels in its satellite packages, the popular HBO channel is not one of them. Similar claims are made with respect to a lack of choice in Canada for language and religious programs, both of which are more abundant on U.S. services. Because the legality of obtaining unlicenced U.S. satellite signals in Canada was not clarified until an April 2002 decision of the Supreme Court of Canada,[7] this practice was referred to as the "grey market," reflecting the ambiguity of the law on this issue. Since April 2002 this is undeniably illegal in Canada.

As an example of the choice offered by grey market satellite systems, one witness appeared before the House of Commons Standing Committee on Canadian Heritage to explain "why it is that 99% of Canadian Latinos who are watching television in Canada at the moment are watching it through the grey market."[8] Choice is clearly a significant issue:

> Through the grey market, they can easily subscribe to 26 Spanish-language channels to watch programs in their mother tongue and follow developments in the land of their birth. For this reason, U.S. satellite systems are very openly sold in the Latin community. Dealers have websites and place full-page ads in community newspapers. You'll find those ads in my information kit. Systems are found in many Spanish bars and restaurants. They've been sold in church basements after Sunday mass and featured as prizes in raffles.[9]

This behaviour is not unique. Similar dealer visibility and practices are found in the Arab, Greek, and Russian communities. Across Canada, the message from ethnic communities is the same: If Canada's cable and satellite companies don't want to serve us in our language we'll buy our services from someone else. An identical attitude exists south of the 49th parallel, where some Americans subscribe to Bell ExpressVu to have access to Canadian channels, French-language services, and hockey games.

At this time, there are four foreign Spanish-language stations with a CRTC category 2 licence, but none is currently distributed by satellite in this country.[10] For this reason, one witness told the Committee that he would:

> ... like to see the CRTC having more flexible rules for allowing foreign satellite channels to be rebroadcast in Canada. In my mind, this does not lead to weakening of the Canadian cultural identity, but the opposite: it leads to improvement, enrichment, and strengthening of the Canadian cultural identity.[11]

These comments and evidence stand in contrast to the statement of Mr. Michael Wernick, Assistant Deputy Minister, Cultural Development, Department of Canadian Heritage, who said:

> It's not my impression that Canadians are just dying to get out there and get to U.S. dishes if they are given the opportunity. Quite the contrary. It was attractive before 1995, because there was no Canadian option. Now there are two. We've gone from zero to a million satellite subscribers in about four years, and the growth is still continuing.[12]

For its part, the CRTC has made it very clear that it does not condone black and grey market activities:

> On the contrary, the Commission is extremely concerned about the activities of grey and black market dealers and the negative effect that these activities have on the Canadian broadcasting system. It is committed to take all measures at its disposal to limit such activities. In this regard, the Commission notes that black and grey market activities have been declared by the Supreme Court of Canada, in Bell ExpressVu Limited Partership vs Richard Rex et al, to be contrary to the provisions of the Radiocommunication Act.[13]

D. How the Grey Market Works

Grey market satellite system vendors sell American direct-to-home decoding systems to Canadian customers who wish to subscribe to U.S. satellite television services. Since Federal Communications Commission (FCC) rules do not permit U.S. signals to be viewed outside the U.S., these vendors supply Canadian customers with U.S. mailing addresses and then contact the U.S. broadcasters on behalf of his Canadian customers and establishes a legitimate U.S. account and subscription to U.S. satellite television services. Once the hardware is purchased, all subscription fees have been paid and the authorization to decode the television signals is obtained, Canadian customers can receive U.S. satellite television.

The Black Market — Grey Market Distinction

Satellite systems supplying direct-to-home U.S. signals to Canadian customers are commonly referred to as "grey market" systems. There is, however, a distinction between "black market" systems and "grey market" systems. A black market system is one in which programming services and signals are stolen by various means designed to circumvent the proper operation of the authorization system. Typically someone obtains an illegal copy of a legitimate access card or code from either an individual or a dealer acting illegally. This illegal card then allows a user with reception equipment to receive satellite television signals without paying for them. The signals that are stolen (or "pirated," as it is sometimes referred to) may be either unauthorized U.S. signals or authorized Canadian signals stolen by means of a hacked or cloned "smart card" or other technological means. With pirated signals, the broadcaster has not authorized the delivery of its services to that particular "customer" and is not being properly compensated for the service. This is therefore stealing. It is like hacking in to the telephone system to get access to free phone service rather than paying the monthly fee. Black market satellite systems and pirated signals are undeniably illegal as a form of theft.

Grey market systems, on the other hand, are those in which programming services are obtained from a service provider who is not licenced to provide those services within the particular jurisdiction, such as being licenced to provide signals within the U.S. but not in Canada. In this instance, the services are paid for and thus the broadcaster is being properly compensated for delivery of service. However, there has been some subterfuge engaged in, such as the provision of a false U.S. postal-box mailing address, to make it appear as though the person receiving the signals is a resident in the territory for which the service provider is legitimately licenced.

It is important to note that in this scenario, Canadian customers pay in full for the services they receive from U.S. satellite services. Prior to the April 2002 Supreme Court of Canada decision resolving the issue,[14] the legality of grey market systems was open to question due to conflicting lower court decisions on the proper interpretation of the prohibition against receiving unauthorized signals found in section 9(1)(c) of the *Radiocommunication Act*. As a result of the Supreme Court decision, there is no question now that grey market systems are illegal under the *Radiocommunication Act*.

Estimating the Size of the Black and Grey Market

The black and grey market in U.S. satellite signals exists as a parallel shadow to Canada's two licenced satellite signal providers. According to one witness, "Unauthorized competition from black- and grey-market U.S. direct broadcast satellites, or DBS services, is a critical problem and is growing worse."[15] This view was emphasized by another witness, who observed that "the presence of black- and grey-market direct-to-home satellite services has increased, not diminished, and continues to pose a threat to our broadcasting system."[16]

Although it was acknowledged that the precise extent of the black and grey markets are difficult to measure,[17] a survey conducted by the Canadian Cable Television Association "estimated that between 520,000 and 700,000 households in Canada receive unauthorized U.S. DBS services."[18] This figure confirmed Bell ExpressVu's own estimate of approximately 600,000 unauthorized U.S. direct-to-home satellite users.[19] The number of unauthorized users roughly corresponds to the number of legitimate Star Choice customers, representing, in effect, a third, albeit illegal, option for Canadian satellite television customers.

The survey commissioned by the Canadian Cable Television Association focused on the incidence of authorized and unauthorized satellite use among households in southwestern Ontario in late February and early March 2002.[20] It revealed that one in five households in southwestern Ontario receives satellite services, and of that 20% figure, between 22% and 28% emerge as "potentially unauthorized users"[21] in that they could not or would not name their satellite service provider. This translates to a range of 4.5% and 5.7% of the market in southwestern Ontario.[22] The report indicates that due to inherent difficulties in measuring illegal and grey market numbers, it is very likely that this figure underestimates the true number of unauthorized users in the survey area.[23] The survey concludes that at a conservative minimum there are 28,035 households using unauthorized satellite services in southwestern Ontario.[24]

In extrapolating these figures to a national level, the survey notes a few caveats. First, it suggests that the estimates based on the research in southwestern Ontario are likely conservative and therefore likely under-represent the total number of unauthorized users.[25] Further:

> There is little reason to believe that the incidence of unauthorized satellite usage would vary significantly in English speaking regions of Canada. It is likely, however, that the incidence may differ in French-speaking Canada, particularly within Quebec, where the demand for English-language services would be lower. This lower demand in Quebec may be offset by a higher incidence of unauthorized use of Canadian service providers that carry all available French language services.[26]

Given these assumptions and caveats, the survey projects the total number of national unauthorized satellite users to be between 475, 864 and 715, 269 households.[27]

Proximity to the United States

Several witnesses informed the Committee that unauthorized satellite use was more significant in areas in close proximity to the U.S. — Canada border:

> The selling of decoders in grey-market satellite dishes and black-market dishes is a huge business in New Brunswick due to our proximity with the American border. It's not only an Ontario phenomenon.[28]

This view was consistently repeated by witnesses across Canada:

> But as we make all of these investments and commitments to the province, operators from across the border, as we've seen, have been taking away business. In last week's buyer flyer in Saint John, for example, of ten advertisements offering satellite systems for sale, seven were for American systems with HU cards for either black-market or grey-market systems.[29]

And:

> Our sense of where the problem is, in some sense, most acute is in southwestern Ontario. That is not a remote region of the country. These are very populated areas, but they're close to the border. The dealers are able to bring that stuff across the border with impunity. There are no limits in bringing these dishes in. They're sold at the store, and people then can go to a local convenience store to buy the cards. We've done that just to see how easy it is to do. It's not illegal to sell the cards. It's not illegal to buy the dishes.[30]

And:

> We experience a larger loss the closer our systems are to the U.S. border. For example, in Estevan, which is only a few minutes from the American border, our losses are substantially higher than in, say, Yorkton. But it is significant. I think the comment was made earlier that people will watch what they want to watch, and I think any restrictions on that — by definition — drive more people to

> black market and grey market. Our customers, at least out here, tend to rebel when they're told what they can and can't watch. They tend to opt out of the Canadian broadcasting system.[31]

Several witnesses also observed that grey market dealers operate overtly, offering no attempt to cloak their activities:

> Retailers now openly sell pirate devices for stealing U.S. DBS programming. They cloak themselves with legitimacy by dishonestly using trademarks similar to DIRECTV and EchoStar. Consumers often don't know the service is illegal. Sometimes the price is so low that it's too compelling to pass up.[32]

And:

> In a recent newspaper article, a Fredericton marketing analyst estimated that there are 3,000 grey-market TV satellites, not to mention black-market ones, in the capital region alone. It represents close to 10% of the homes in Fredericton. It's no longer a whispered secret in Moncton, Bathurst, and other markets. People talk openly and freely of black-market satellite availability.[33]

The Cost of the Black and Grey Markets

The estimated cost of the black and grey markets in Canada is significant:

> The presence of this second, unlicensed broadcasting industry in Canada has a material negative effect on the licensed Canadian broadcasting industry. Its market share equates to about $325 million in lost annual revenues for Canadian BDUs alone, or broadcasting distribution undertakings. In 600,000 households, there is now little or no exposure to Canadian programming. No CBC. No TQS. No TSN.
>
> Canadian programmers lose subscriber fees and advertising revenues. Canadian production funds lose $16 million annually in direct contributions from BDUs, as well as other funding from programmers. As producers lose funding, they lose follow-on international revenue, and artists lose opportunities. In short, Canadians lose jobs.
>
> To restate it, unlicensed competitors put at risk the employment base of our industry and the billions of dollars of investment in

> infrastructure and programming by our industry; and last, but not least, they completely undermine the policy foundation of our broadcasting industry.[14]

And:

> Other broadcasters, satellite retailers, film and television producers, writers, actors, composers, and everyone else whose Canadian jobs are jeopardized by the theft of satellite signals, believe unauthorized systems, whether black or grey, must not be allowed to operate in Canada.[15]

This point was repeatedly made by other industry witnesses:

> Mr. Chairman, the entire Canadian broadcasting system is feeling the impact of the black market as satellite dealers are enticing customers with technology that allows them to beat the system. This means, in the end, more and more revenues are being siphoned away from Canadian artists, technicians, producers, broadcasters, and distributors.
>
> Industry research has demonstrated that black market satellite services could cost the Canadian broadcasting system as much as $400 million or more each year. Those are dollars that could be going into strong programming, creating jobs for Canadian men and women in every part of this country.
>
> This is not a small or insignificant problem. Our research shows the black market is comparable in size to Canada's second legitimate satellite company. To put it another way, it is equivalent to the Atlantic provinces simply dropping out of the Canadian broadcasting system altogether.[16]

And:

> As was noted in the last year, black market satellite services have grown to estimates of between 500,000 and 600,000 customers. Let's be clear; these black market operations are stealing Canadian customers with something very compelling — free service. This affects creators, broadcasters, rights holders, and distributors, as we lose those customers to a competitor that we can't see or compete with. We need government and industry action now to fix this situation.[17]

The Current Legal Status of Grey Market Satellite Systems

On 26 April 2002, the Supreme Court of Canada held that grey market satellite reception in Canada is illegal.[38] Specifically, the Court held that section 9 of the *Radiocommunication Act* prohibits the decoding of all encrypted satellite signals, with a limited exception. It based this decision on principles of statutory interpretation and an examination of the language used by Parliament in creating the provision, together with a view to the overall objectives and regulatory regime for broadcasting in Canada.

The Court held that the *Radiocommunication Act* forbids the activity of decoding an encrypted subscription signal, and thus the prohibition "is directed towards the reception side of the broadcasting equation."[39] This prohibition captures the decoding of any encrypted signal, subject to the exception that the person receiving the signal has received authorization from the lawful distributor. Here the Court is quite clear in stating that "if no lawful distributor exists to grant such authorization, the general prohibition must remain in effect."[40] The only parties with the lawful right to distribute the signals in Canada — and thus grant authorization — are those licenced by the CRTC to do so: Bell ExpressVu or Star Choice. Therefore, reception of satellite signals emanating from U.S. broadcasters to Canadian residents through grey market systems is against the law in Canada.

In further support of this view that section 9(1)(c) of the Act creates an absolute prohibition against decoding, followed by a limited exception, the Supreme Court looked to the broader context of the overall regulatory regimes of telecommunications and broadcasting in Canada. It stated that the *Radiocommunication Act* and the *Broadcasting Act* operate in tandem as part of a single regulatory scheme. The *Broadcasting Act*, the Court said, evinces a clear cultural orientation. As such, the wording of the *Radiocommunication Act*, when read in the context of the objectives of *Broadcasting Act*, furthers broadcasting policy objectives by encouraging broadcasters to comply with the regulatory process before they could grant authorization to have their signals decoded and collect subscription fees: why, asked the court, "would Parliament provide for Canadian ownership, Canadian production, Canadian content in its broadcasting and then simply leave the door open for unregulated, foreign broadcasting to come in and sweep it aside? What purpose would have been served?"[41]

Lastly, this particular interpretation provides protection to the holders of copyright and complements the scheme of the *Copyright Act*. An absolute prohibition against decoding except where authorization is granted by the person with the lawful right to transmit and authorize decoding of the signal extends protection to the holders of copyright in the program itself, since it would prohibit the unauthorized reception of signals that violate copyright.

Implications

One of the major concerns as a result of this decision was a fear that the several hundred thousand Canadians who own grey market satellite systems would be vulnerable to criminal charges because they were in breach of the *Radiocommunication Act*. It is worth remembering that these systems were legitimately purchased and all U.S. subscription fees paid in full. Given that the Act provides for criminal sanctions of imprisonment and onerous fines for every person found to be in violation of the statute, many were afraid that they could expect a knock on their door and a visit from the police and that their satellite equipment would be confiscated. Indeed, this line of argument was pursued by counsel on behalf of grey market satellite system vendors at the Supreme Court hearing of this appeal.

The Court, however, was not convinced that that particular scenario would in fact occur. The language used by the Court here is instructive, and it is helpful to set it out and examine it in full.

The Court first stated, "I am not, however, persuaded that this plays an important role in the interpretive process here."[42] In other words, the Court felt that this is an issue tangential to the legal substance of this appeal, which focused narrowly on how to properly interpret the wording of section 9(1)(c). The Court then went on to say:

> In any event, I do not think it correct to insinuate that the decision in this appeal will have the effect of automatically branding every Canadian resident who subscribes to and pays for U.S. DTH broadcasting services as a criminal. The penal offence in s. 10(1)(b) requires that circumstances "give rise to a reasonable inference that the equipment, device or component has been used, or is or was intended to be used, for the purpose of contravening section 9" (emphasis in original), and allows for a "lawful excuse" defence. Section 10(2.5) further provides that "[n]o person shall be convicted of an offence under paragraph 9(1)(c) ... if the person exercised all due diligence to prevent the commission of the offence".[43]

Put another way, prior to this decision, the legality of ownership and use of grey market satellite systems was in question — which is why the issue made it to the Supreme Court of Canada — and you cannot criminalize activity that is not clearly criminal. As there were some legitimate reservations as to whether this activity was in breach of the law, it would be impossible to say that those who acted prior to the date of this decision (26 April 2002) were obtaining or using the systems for the purpose of contravening section 9 of the *Radiocommunication Act*. If you did not know the equipment was clearly illegal, there would be no intent to use the equipment for the purpose of violating the Act. This line of argument fails as of the date of the ruling, as the law on this is now clear.

Finally on this issue, the Court concluded by stating that "[s]ince it is neither necessary nor appropriate to pursue the meaning of these provisions absent the proper factual context, I refrain from doing so."[44] This means that as this appeal focused very narrowly on a statutory interpretation issue, the criminal law liability and sanctions aspects of the legislation will be left to another time when the facts and context of the case raise them directly.

A further aspect of this criminalization issue is whom can be captured by it: grey market system vendors or owners? According to the wording of the *Radiocommunication Act*, both. Sections 10(1)(*b*) and 10(2.1) create summary conviction offences for every person providing equipment for the purposes of contravening s. 9 [vendors] **and** for every person who in fact contravenes s. 9(1)(*c*) [owners/users of decoding devices] [emphasis added]. Again, though, given the cautionary language of the Court with respect to the effects of this decision, it would appear unlikely that action would be taken against owners.

However, vendors may be another matter. Canadian satellite signal distributors and others have consistently maintained that they seek action against the vendors rather than the end users. For example, Mr. David McLennan, President and Chief Executive Officer of Bell ExpressVu, told the Committee that:

> With respect to where we should be focusing our efforts on the black market and grey market, that starts with enforcing it at the level at which this product is being sold. We need to up the temperature on satellite dealers and retailers who are advertising and selling this product. That's where it starts. If I can go back to the … Supreme

> Court decision, I think that's just an important catalyst to being able to turn the temperature up on the law enforcement side.[45]

Ms. Janet Yale, President and Chief Executive Officer, Canadian Cable Television Association, echoed this view:

> You're absolutely right; this is a very difficult public relations battle to win, and one of the reasons why we don't say that the solution is to charge individuals who have bought the dishes. If there is advertising in the newspaper that says to come and buy this dish, and buy these cards, people naturally assume that if it weren't appropriate to buy them, they wouldn't be available for sale. So our answer is not to punish the consumers who are buying these cards but to go after the dealers who are selling them.
>
> Second, we try to educate the public on the fact that this is theft, pure and simple — theft. It's no different from stealing something out of a store, because the people who have created this product are not being compensated. So we almost have to create victims of this crime and point out to people that there are real victims, Canadian artists and creators, which means jobs in Canada, if not yesterday then certainly tomorrow.[46]

A *Globe and Mail* newspaper article the morning after the decision stated that:

> The broadcasting industry, government and RCMP alike say they'll be targeting commercial vendors of decoders rather than individual owners of satellite dishes or subscribers to U.S. satellite services. 'Our primary focus is the dealers. It's not our intention to root around trying to find subscriber lists', said Ian Gavanagh, vice-president of Bell ExpressVu.[47]

This position was repeated by RCMP media relations officer Corporal Benoit Desjardins. He stated that "the RCMP continue to investigate the grey market with a focus on persons or companies operating illegally on a commercial scale."[48] This focus on dealer activity rather than individual satellite dish owners has been consistently followed by law enforcement and Canadian satellite industry officials in the months after the Supreme Court of Canada decision.[49]

E. The "Reverse Grey Market"

It is important to note that a "reverse grey market" exists, albeit to a much smaller extent, in the importation of Canadian satellite signals to the United States. Canadian television signals are typically sought by Canadians who live in the United States and wish to receive Canadian television broadcasts that are not provided by American broadcasters. The CBC's *Hockey Night in Canada* is a good example.

However, just as it is illegal to receive unlicenced American satellite signals at Canadian addresses, in the United States it is illegal to receive unlicenced Canadian satellite signals at American addresses. Under current U.S. FCC licencing, no Canadian satellite signal provider is permitted to broadcast signals to the United States. Nevertheless, the desire to receive Canadian broadcasting in the United States has given rise to the so-called "reverse grey market." This works in much the same way as does the Canadian grey market in U.S. satellite signals. The Committee heard of a Web site that apparently facilitates access and connection to Canadian satellite services from the United States:

> It's called "The Canadian Solution: An economical way of providing a vast improvement in the quality and quantity of TV & radio signals to your home". This is on a site from Plain, Wisconsin. It says "Lower your satellite programming costs!", "Restore CBC Radio & TV Reception!!", and so on. On that website are Bell ExpressVu, Star Choice, and so on.[50]

A 1-800 telephone number is then provided for potential users of this service.

The use of a 1-800 number is significant. Legal subscribers to legal satellite services in Canada call a 1-800 telephone number in order to activate the service. The 1-800 number is intended to be accessible only from inside Canada, but the Committee heard that this barrier is easily defeated by a simple call forwarding system. Potential reverse grey market users call a different 1-800 number — based in Canada but accessible from all over North America — first, and that call is then forwarded from a Canadian location to the Canada-only accessible number.[51] This bypasses the geographic constraint placed by the limitation of the telephone number to Canada only. Canadian reverse grey market subscribers then pay for their Canadian satellite service with a Canadian-bank issued credit card, thereby creating the appearance that the service is being delivered within Canada.

When presented with evidence of this practice, Canadian satellite signal providers denied knowledge of either the Web site promoting access to Canadian satellite signals in the United States or the call-forwarding signal activation service. Mr. David McLennan, President and Chief Executive Officer of Bell ExpressVu, explicitly stated that "we are not authorized to deliver our signal to the United States" and "we will not knowingly deliver service to a system in the United States."[52] Of the Web site and call forwarding system, Mr. McLennan said, "I'm not aware of that. That's not an ExpressVu initiative by any means."[53] He further stated that just as Bell ExpressVu has been vigorously pressing for the detection and prosecution of grey market satellite services in Canada, his company has been "the most aggressive party in Canada in pursuing this [reverse grey market]".[54]

One Committee member felt that further evidence of Bell ExpressVu's commitment to ending all grey market activity would be useful:

> I would just suggest something on my own behalf and perhaps on the behalf of other members of the committee. If I could be convinced, perhaps in a further submission, of the aggressive steps Bell ExpressVu is taking to stop the reverse grey market — that you are going after the Canadian snowbirds and people like this one on the Internet, that you are taking the necessary, simple, technological action that I've suggested to you this morning — perhaps I would feel more inclined to say, yes, we should do something.
>
> I'm just of the impression — perhaps it's a bad impression — that the DTH marketers in Canada are talking about and asking for action on the grey and black markets in Canada, but that, because of the very large footprint that you have with your satellite signal, the DTH providers in Canada are not really serious in turn about stopping the revenue sources from the reverse grey market.[55]

Bell ExpressVu responded to this with a letter addressed to the Committee Chair repeating their policy that the company will not knowingly allow a person to receive their services outside of Canada.[56] The letter also outlined the various steps Bell ExpressVu has taken to ensure Canadian satellite signals are only delivered to Canadian addresses. These measures include employee training, service contracts and equipment sales agreements prohibiting receipt of their signals or use of equipment outside Canada, inventory management and tracking and enforcement activities.[57]

F. The Alleged "Blue Market" Satellite Issue

In addition to the better-known black and grey markets in satellite equipment and signals, it has been suggested that a third, "blue" market exists in the sale of illegal equipment with which to view illegally obtained signals. This market allegedly arose in response to the April 2002 Supreme Court of Canada decision making it illegal in Canada to sell decoding equipment allowing access to unlicenced U.S. satellite services such as DirecTV and EchoStar.

Until that decision, the legality of selling equipment and access to these U.S. services was in question, and some satellite system vendors and purchasers in Canada engaged in this so-called grey market. Purchasers seeking access to U.S. satellite services could purchase the necessary reception equipment — commonly a satellite dish and set-top box that connects to the viewer's television set — and then arrange and pay for the delivery of U.S. satellite signals to that equipment. This was normally facilitated by the vendor, who would supply the U.S. satellite signal distributors with a false U.S. mailing address to give the appearance that the U.S. satellite signals were being delivered to a U.S. address in accordance with U.S. law. In fact the signals were being delivered to a Canadian address and thus these particular Canadian consumers were receiving satellite signals from a distributor that was not licenced to provide that service in Canada. The decision of the Supreme Court of Canada rendered this practice undeniably illegal.

After this decision, those Canadians who had subscribed to U.S. satellite services now found themselves burdened with illegal equipment that can only receive U.S. satellite signals. Bell ExpressVu, which is one of the two undertakings licenced to provide satellite signals in Canada, offered an amnesty program in which this illegal equipment could be turned in to Bell ExpressVu and exchanged for Bell ExpressVu's legal and licenced equipment and service. What became of that now-illegal grey market equipment has been the subject of some curiosity.

It has been alleged that Bell then "sold the equipment, thousands of units, at $5 a piece, to a small Ontario company called Continental Components".[58] Continental Components in turn sold the equipment — which can only receive U.S. satellite signals and not Canadian satellite signals — back to Canadian consumers. This became known as the "blue" market — so-called in reference to Bell's corporate colour. Bell ExpressVu vehemently denied these allegations. John Sheridan, President and Chief

Operating Officer of Bell Canada, which is the owner of the ExpressVu satellite service said, "[To] say that problems within the industry with piracy and signal theft in Canada relates to ExpressVu [is] nonsense."[59]

Mr. Sheridan, however, did acknowledge that piracy and signal theft remain problematic in Canada. The theft of U.S. signals, he said, is a "real issue" because a growing number of people are using hacked satellite cards and illegal technology to avoid Canadian suppliers.[60] He further added that ExpressVu is trying to use technical means to combat the theft of its signals. Mr. Timothy MGee, President of Bell ExpressVu, echoed Mr. Sheridan's denial of Bell ExpressVu's involvement in the theft of U.S. signals and further emphasized the need for a "coordinated industry wide response"[61] to this theft. "We are also doing everything we can to grind down, internally, any of the issues that could give rise to the theft of our own services. It's in our interest to do so. Any suggestion to the contrary is simply wrong," he stated.[62]

G. Future Challenges

> **The Committee fully supports measures by the appropriate authorities to enforce compliance with Canadian law, which prohibits the reception of unauthorized satellite signals and the theft of satellite signals.**

That said, the Committee is well aware that while the decision establishing the illegality of the grey market in Canada has settled one issue, it has left open several others. Certainly grey market system vendors do not view the Supreme Court decision as definitive. Indeed, while that particular aspect of the Supreme Court decision cannot be appealed, days after the decision lawyers representing 17 small grey-market satellite television system vendors won a seven day injunction delaying Crown enforcement of the ruling until a constitutional challenge can be heard. They appeared again in the Ontario Superior Court, seeking to extend the injunction. The Ontario Superior Court declined, stating that the dealers had failed to provide evidence that they will suffer irreparable harm in the event that the injunction was not extended. That 10 May 2002 ruling cleared the way for Industry Canada and the RCMP to begin enforcing the Supreme Court of Canada decision.

Probably the more significant future question is the inevitable Charter challenge to the prohibition against decoding foreign broadcasting signals. The Supreme Court of Canada essentially invited the issue to return to it, stating:

> It may well be that, when this matter returns to trial, the respondents' counsel will make an application to have s. 9(1)(c) of the Radiocommunication Act declared unconstitutional for violating the *Charter*. At that time, it will be necessary to consider evidence regarding whose expressive rights are engaged, whether these rights are violated by s. 9(1)(c), and, if they are, whether they are justified under s. 1.[63]

Such an appeal is presently before the courts. A group of grey-market system distributors has filed an application in the Ontario Superior Court of Justice seeking a declaration that those provisions of the *Radiocommunication Act* prohibiting reception of unlicenced U.S. satellite signals are contrary to the guarantee of freedom of expression as set out in section 2(*b*) of the Canadian Charter of Rights and Freedoms.[64] This hearing will directly pit freedom of expression values against Canadian broadcasting policies and objectives. This will necessitate a balancing of interests between the freedom to watch the television programming of one's choice versus broadcasting policies and regulatory schemes designed to maintain and enhance national identity and cultural sovereignty. It is likely to take some time for this issue to wend its way through the various levels of hearings and appeals before arriving back before the Supreme Court of Canada for resolution.

All this being said, the Committee also realizes that greater access to international programming is likely the primary reason why so many Canadians have elected to subscribe to foreign satellite televisions services. As Professor Will Straw told the Committee:

> When people, through grey-market satellites or through cable, watch the news on the BBC, watch old Indian films from Bollywood, to me that's strengthening Canadian culture just as importantly as it is if they're watching Heritage Minutes. … They're thinking of themselves globally, in a way that we need to start thinking about ourselves in Canada. … I think we have to find a way of opening ourselves up to more kinds of programming from different parts of the world. Over time, that is going to diminish the strength and the dominance of American programming.[65]

With this in mind:

RECOMMENDATION 16.1:

The Committee recommends that the CRTC permit Canadian broadcasting distribution undertakings to offer a wider range of international programming, while being respectful of Canadian content regulations.

Indeed, it is the Committee's view that with a greater range of international programming choices, most citizens who have opted out of Canada's broadcasting system would be repatriated. In parallel, the revenues of Canada's cable and satellite service providers would increase, as would their required contributions to the Canadian Television Fund, and, by extension, the total sum of available funds for the creation of new Canadian television programming.

Endnotes

[1] Janet Yale, President and Chief Executive Officer, Canadian Cable Television Association, Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[2] Ken Stein, Senior Vice-President, Corporate and Regulatory Affairs, Shaw Communications Inc., Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[3] David McLennan, President and Chief Executive Officer, Bell ExpressVu, Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[4] Janet Yale, Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[5] Metin Akgun, Vice-President, Broadcast Technology Research, Communications Research Centre Canada, Meeting of the Standing Committee on Canadian Heritage, 31 January 2002.

[6] "[T]he concept of 'lawful right' refers to the person who possesses the regulatory rights through proper licensing under the Act, the authorization of the CRTC as well as the contractual and copyrights necessarily pertaining to the content involved in the transmission of the encrypted subscription programming signal or encrypted network feed." *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] SCC 42 at para. 42, per Iacobucci J., quoting Létourneau J.A. in *ExpressVu Inc.* v. *NII Norsat International Inc.*, [1998] 1 F.C. 245 at para. 4.

[7] *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] SCC.

[8] Paul Fitzgerald, Vice-President and Legal Counsel, Congrès Iberoaméricain, Meeting of the Standing Committee on Canadian Heritage, 23 April 2002.

[9] Ibid.

[10] Ibid.

[11] Maxim Atanassov, Meeting of the Standing Committee on Canadian Heritage, 2 May 2002.

[12] Meeting of the Standing Committee on Canadian Heritage, 20 November 2001.

[13] Decision CRTC 2002-319.

[14] *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] SCC.

[15] Ian Gavaghan, Vice-President and General Counsel, Bell ExpressVu, Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[16] Mr. Alan Goluboff, President, Directors Guild of Canada, Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[17] "It is difficult to put a figure on that. I know the industry association is undertaking a survey of members across the country right now, even as we speak, to determine the kind of loss to the grey market and to the black market, but it is significant." Jim Deane, President and Chief Executive Officer, Access Communications Co-operative Ltd., Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[18] Ian Gavaghan, Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[19] Ibid.

[20] The Strategic Counsel, "A Report to the Canadian Cable Television Association, unauthorized Satellite Use in Southwestern Ontario", April 2002, www.ccta.ca.

[21] Ibid.

[22] Ibid.

[23] Ibid.

[24] Ibid.

[25] Ibid.

[26] Ibid.

[27] Ibid.

[28] Ken Marshall, Vice-President and General Manager, Atlantic Region, Rogers Cable Inc., Meeting of the Standing Committee on Canadian Heritage, 2 May 2002.

[29] Ibid.

[30] Janet Yale, Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[31] Jim Deane, Meeting of the Standing Committee on Canadian Heritage, 28 February 2002.

[32] Ian Gavaghan, Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[33] Ken Marshall, Meeting of the Standing Committee on Canadian Heritage, 2 May 2002.

[34] Ian Gavaghan, Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[35] Ken Marshall, Meeting of the Standing Committee on Canadian Heritage, 2 May 2002.

[36] Yves Mayrand, Vice-President, Legal Affairs and Secretariat, COGECO Inc., Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[37] Dave Baxter, President, WestMan Communications Group, Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[38] *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] SCC.

[39] *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] SCC 42 at para. 33. Emphasis in original.

[40] Ibid, at para. 41.

[41] Ibid, at para. 48.

[42] Ibid, at para. 54.

[43] Ibid.

[44] Ibid.

[45] David McLennan, Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[46] Janet Yale, Meeting of the Standing Committee on Canadian Heritage, 19 February 2002.

[47] H. Scoffield, "Penalties to target satellite decoder vendors," *Globe and Mail*, 27 April 2002.

[48] K. Damsel, "Dish dealers lose court bid," *Globe and Mail*, 11 May 2002.

[49] See, for example, "Lawsuit targets grey market satellite dealers," CTV News, Sci-Tech, 21 October 2002; S. Kari, "Media giants file $100 million lawsuit over grey-market dishes," *The Ottawa Citizen*, 22 October 2002, and CASST (Coalition Against Satellite Signal Theft) Public Awareness Campaign Letter, 28 October 2002, www.casst-ccvss.ca.

[50] Jim Abbot, Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[51] Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[52] David McLennan, Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[53] Ibid.

[54] Ibid.

[55] Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[56] Letter to Clifford Lincoln, Chair, Standing Committee on Canadian Heritage, from Ian Gavaghan, Vice-President and General Counsel, Bell ExpressVu, 14 June 2002.

[57] Ibid.

[58] "Bell ExpressVu accused of helping grey market satellite," Saša Petricic, *The National*, CBC Television, 19 June 2002.

[59] Mark Evans, "Bell denies charges levelled by Quebecor: Bell COO labels Peladeau's signal-theft allegation as nonsense: 'Piracy industry issue'", *National Post*, 7 November 2002.

[60] Ibid.

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[61] David Paddon, "Peladeau takes shot at 'blue' market for pirated ExpressVu signals," *Canadian Press*, 6 November 2002.

[62] Ibid.

[63] *Bell ExpressVu Limited Partnership* v. *Rex*, [2002] SCC 42 at para. 67.

[64] *Incredible Electronics Inc.* v. *Canada (Attorney General)*, Ontario Superior Court of Justice, court file number 02-CV-228526CM1.

[65] Meeting of the Standing Committee on Canadian Heritage, 21 November 2002.

MAINTAINING A SINGLE SYSTEM

Chapter 17

Globilization and Cultural Diversity

Through direct and indirect support Canadians have traditionally been willing to support broadcasting to advance public objectives. Other western democracies such as Australia, France, and Germany are no different; a certain amount of regulation and protection are seen as both beneficial and as an underpinning of their broadcasting systems. Finding the proper balance is always difficult and is a task the CRTC and other regulators struggle with on a daily basis.

This chapter reviews international considerations that are applying pressures on the diversity of the Canadian broadcasting system. To begin, it reviews cultural exemption strategies for international trade agreements. Next, it discusses proposals for the creation of an international instrument to protect cultural sovereignty. Thereafter, a brief discussion on international cooperation and coordination is presented. Finally, it discusses what witnesses told the Committee about various aspects of cultural diversity and the Canadian broadcasting system.[1]

A. Cultural Exemption Strategies and International Agreements

It is important to remember that Canada's broadcasting policy is in fact a cultural policy. Rules of general application have raised concerns for the broadcast programming sector specifically. Section 2005 of the Canada-U.S. Free Trade Agreement (FTA, 1987), (which was extended in 1992 to the North American Free Trade Agreement (NAFTA)), and the rules of the World Trade Organization (WTO, 1995) (including the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS)) were of primary concern to witnesses who appeared before the Committee.

Within the context of discussions concerning copyright, witnesses also raised the WTO's TRIPS (Trade Related Aspects of Intellectual Property

Rights) Agreement and the Berne Convention (for authors' rights). Section 301 of the *U.S. Trade Act* and other agreements were also mentioned.

Section 2005 of the Free Trade Agreement affirmatively removed cultural industries from the table in paragraph 1: "cultural industries are exempt from the provisions of this agreement." Paragraph 2, however, says that "a party may take measures of equivalent commercial effect in response to actions that would have been inconsistent with this Agreement but for paragraph 1." Cultural protection, in other words, is allowed but not without consequences.

What are the Cultural Industries?

The NAFTA cultural exemption directs that all measures relating to cultural industries be considered according to whether they are consistent with the FTA, which includes FTA Section 2005 exempting cultural industries from the obligations of the FTA. The result is that the test of consistency is with the FTA, not the NAFTA.

Section 2107 of NAFTA defines "Cultural industries" as follows:

"persons engaged in any of the following activities:

(a) the publication, distribution, or sale of books, magazines, periodicals or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing;

(b) the production, distribution, sale or exhibition of films or video recordings;

(c) the production, distribution, sale or exhibition of audio or video music recordings;

(d) the publication, distribution or sale of music in print or machine readable form; or

(e) radiocommunications in which the transmissions are intended for direct reception by the general public, and all radio, television and cable broadcasting undertakings and all satellite programming and broadcast network services".

Witnesses told the Committee that the cultural exemption strategy has had mixed results. The case of periodical publications, brought to the World Trade Organization by the United States, is a case in point. In 1997 the WTO ruled against certain Canadian measures, including a customs tariff and an excise tax on foreign split-run magazines.[2] Before coming to a bilateral 1999 agreement by which Canada was permitted to retain certain restrictions on advertising services, Canada was also threatened with possible retaliatory action pursuant to Section 301 of the *U.S. Trade Act*. American law allows for unilateral action to be taken against unfair trading practices by foreign nations in related or non-congruent industries.

Figure 17.1 summarizes the basic principles of multilateral trade.

Figure 17.1 Principles of the multilateral trading system

The multilateral trading system is based on the following concepts and principles:

Most Favoured Nation (MFN) status: Countries that are partners to trade agreements agree to grant all their trading partners "most favoured nation" (MFN) status and treat all of them equally.

National Treatment: When a trading partner's goods or services enter a country's market, the receiving country agrees to give them "national treatment" or treat them the same as its own national goods and services.

Transparency/Predictability: Countries agree to make all their trade practices "transparent" or "visible" to their trading partners, and avoid unfair or less visible practices, such as subsidizing industries or dumping products. Countries also agree to negotiate binding agreements that create a predictable trade environment, so that foreign companies and investors need not to worry about countries suddenly throwing up arbitrary barriers to trade. These principles for international trade agreements are the basis for the GATT, GATS and the FTA.

To date, Canada has always maintained a cultural exemption policy in the case of negotiations for a Multilateral Agreement on Investment (MAI) and in other negotiations. For example, bilateral Canadian free trade agreements with Chile, Costa Rica and Israel all include cultural exemptions; however, unlike the Canada-U.S. FTA, none of these agreements allow for retaliation against non-conforming measures. Organizations such as the Canadian Conference of the Arts pleaded with the Committee to "[m]aintain exclusion of culture from trade agreements".[3] Other witnesses, largely from the artistic community, agreed with this call. These include: the Société professionnelle des auteurs et des compositeurs du Québec; the Canadian Association of Film Distributors and Exporters; the Association des réalisateurs et des réalisatrices du Québec; the Société des auteurs de radio, télévision et cinéma; the Association québécoise de l'industrie du disque, du spectacle et de la vidéo; the Association des producteurs de films et de télévision du Québec; and the Union des artistes.

The seven above-mentioned organizations are members of the Coalition for Cultural Diversity. The Coalition believes that cultural sovereignty — the right of a state to legislate in the cultural sector — should be non-negotiable. In this regard, they told the Committee that they have:

> … established two principles to meet that goal. The first is cultural exemption. Culture should be excluded from any trade agreement, be it bilateral or regional, such as the Free Trade Area of the Americas, or international, such as GATT, GATS or the World Trade Organization. That's the first part. Let's begin by completely excluding cultural services, goods and products from any international trade treaty or agreement. Culture should be exempt from trade liberalization, because the laws which apply to it go completely against the cultural structure of a country such as Canada and of most other countries in the world, on the one hand; but on the other, we must manage cultural exchanges between countries.
>
> How to achieve this? This is another aspect of the work of the Coalition. We should develop an international convention or an international organization which would manage cultural trade between countries. What we do not know is what form this international convention should take. What should it cover? How can we ensure that the principles contained therein will not go against the principles of organizations such as the World Trade Organization? In other words, we will have to make sure that there will be no retaliation. How can we make sure that this organization will have precedence over other trade agreements? The other question we must ask ourselves is: who will oversee it? Will it be the United Nations? Will it be a treaty similar to the Kyoto treaty on the environment? Should any other international organization oversee this convention? There is no consensus, no agreement.[4]

These are the two main approaches: exempting culture from trade agreements and creating an international covenant on cultural diversity. The Cultural Industries Sectoral Advisory Group (SAGIT) advanced the same two approaches on international trade in its 1999 report, *New Strategies for Culture and Trade: Canadian Culture in a Global World*, which was written within the context of digitization, convergence, emerging technologies, enlarging multinational corporations, and liberalizing international institutions. The SAGIT report also recognized two other possible strategies for trade in culture: to make no commitment on culture whatsoever; or to make agreements covering specific sectors, one-by-one.

A number of witnesses argued that cultural sovereignty concerns were unwarranted, or worse, that a cultural exemption could backfire. In their submission to the Committee, AOL Time Warner wrote that sovereignty concerns are unwarranted: "[a]ssistance to, and promotion of, Canadian culture can be accomplished in a manner which is consistent with existing and anticipated trade treaties."[5] The Canadian Motion Picture Distributors Association (CMPDA) raised another objection:

> ... extending the cultural industries exemption ... fails to provide either transparency or certainty and leaves Canadian industries vulnerable to unilateral retaliation... The CMPDA recommends that Canadian cultural industries be put on the table in multilateral trade negotiations.[6]

The CMPDA's Vice-President, Ms. Susan Peacock, told the Committee that "exempting cultural industries from trade agreements does not mean there won't be any trade disputes."[7] Indeed, as a case in point, in 1994 the CRTC granted the request of a Canadian country music station, New Country Now (NCN), to remove an American-owned country music station, Country Music Television (CMT), from the list of eligible specialty television services.[8] After losing a court case, CMT threatened to remove Canadian artists from its non-Canadian services in the United States and elsewhere, and filed a Section 301 complaint. The office of the United States trade representative supported CMT's case. In 1995, the issue subsided following a business arrangement concluded by CMT and NCN in which CMT purchased a share of NCN and the Canadian channel rebranded itself as "CMT Canada."

Regarding the creation of an international instrument to protect the interests of cultural diversity, the degree of optimism ranged greatly among witnesses. Groups such as the Canadian Independent Record Production Association (CIRPA) indicated that they support "the concept of the New Instrument on Cultural Diversity put forward by the SAGIT although clearly this area is very complex and will require very close study to ensure the best possible outcomes."[9] Similarly, the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) noted that it:

> ... supports the call for the implementation of a global cultural pact, a New International Instrument for Cultural Diversity, to

> provide a permanent legal foundation for the right of states to support their own cultures. Until that Instrument can be implemented, Canada must be firm in its resolve to not make any commitments in trade negotiations that would further restrict, either directly or indirectly, our right to implement, maintain or modify the policies we need in Canada.[10]

Other witnesses supported the call of the Fédération nationale des communications, which would like Canada to altogether "denounce and reject any international economic agreement that attacks the right of states to set their own rules for the development and protection of culture and communications".[11] SOCAN, the Society of Composers, Authors and Music Publishers of Canada, warned the Committee that the government must move quickly and prudently. Their main concern was that relaxing trade rules would open a Pandora's Box:

> For example, NAFTA's article 1106 creates obligations regarding performance requirements. SOCAN opposes article 1106, because it limits Canada's ability to develop our domestic economy by using performance requirements, such as Canadian content rules that require foreign investors to use Canadian labour, goods, or services.
>
> In the absence of the NAFTA's cultural exemption, which in practice has not provided absolute protection, article 1106 would prohibit the application of Canadian content regulations to American investors. This would adversely affect SOCAN's members.
>
> So far, article 1106 has not been an issue, because foreign investment is currently restricted in the broadcasting sector. The [C]ommittee must therefore carefully consider the Canadian content consequences that surely would result if Canada opens the broadcasting sector up to foreign investors. It is also important to stress that investor-state dispute provisions could expose our cultural measures to attack by foreign corporations.
>
> As a result of the above concerns regarding the Government of Canada's current WTO position, we believe the proposed international instrument on cultural diversity referred to earlier must be concluded as quickly as possible.[12]

Similarly, the Canadian Broadcasting Corporation pointed out in its submission to the Committee that:

> An important element of future trade negotiation in the area of cultural industries will be to define very clearly the nature of the CBC's mandate and funding. Otherwise, the CBC's funding could be exposed to trade actions.[13]

Since the late 1990s, the International Network for Cultural Policy (INCP), the International Network on Cultural Diversity (INCD), and others, have been working towards a new international instrument on cultural diversity, which would include cultural industries such as broadcasting. The INCP works with ministers of culture from around the world, while the INCD and others operate as non-governmental civil society organizations. Indeed, the very idea of a new international instrument (sometimes referred to as a Covenant or a Treaty) is a Canadian one, emanating from the SAGIT report. Figure 17.2 summarizes what a new instrument would, in the view of the SAGIT, accomplish.

Figure 17.2 An international instrument on cultural diversity: What would it do?

An international instrument on cultural diversity would:

- recognize the importance of cultural diversity;
- acknowledge that cultural goods and services are significantly different from other products;
- acknowledge that domestic measures and policies intended to ensure access to a variety of indigenous cultural products are significantly different from other policies;
- set out rules on the kind of domestic regulatory and other measures that countries can and cannot use to enhance cultural and linguistic diversity; and
- establish how trade disciplines would apply or not apply to cultural measures that meet the agreed upon rules.

In her comments to the Heritage Committee, the Minister of Canadian Heritage praised developing countries such as Mexico and Colombia for their concern about broadcasting issues.[14] In March 2001 the INCP Working Group on Broadcasting in a Global Environment held its initial meeting at which a model of "sustainable communication … based on democratic values and freedom of expression" and "a diversity of approaches" was discussed.[15]

On 2 November 2001, at UNESCO's 31st General Conference in Paris, France, the "Universal Declaration of Cultural Diversity" was adopted.[16] Thereafter, in Cape Town, South Africa on 14-16 October 2002, the INCP agreed that UNESCO was the appropriate international institution to house and implement an international instrument on cultural diversity.[17]

Other organizations, including La francophonie (whose membership includes Canada, Quebec, and New Brunswick), have made similar declarations and have parallel processes in place to encourage progress. Its *Déclaration de Beyrouth* (Beirut Summit, 18-20 October 2002) echoed the call from Cape Town:

> We applaud the adoption of the UNESCO Declaration on Cultural Diversity. We support the principle of the development of a universal regulatory framework and we have consequently decided to contribute actively toward the adoption by UNESCO of an international convention on cultural diversity ...[18] [*Translation*]

But this declaration also moved beyond the INCP approach and rejected any avenue running through the WTO or other trade agreements:

> We believe, under the present conditions, that the preservation of cultural diversity means abstaining from any liberalization with the WTO relating to cultural goods and services, in order not to compromise the effectiveness of the instruments designed to promote and support cultural diversity[19] [*Translation*]

On 12 December 2002, the Committee heard expert testimony from a distinguished panel: Mr. Denny Gélinas (Director General, Department of Canadian Heritage), Mr. Peter Grant (Senior Partner, McCarthy Tétrault), Mr. Ivan Bernier (law professor, Laval University), Mr. Robert Pilon (Executive Vice-President, Coalition for Cultural Diversity), Mr. Ken Stein (Chair, SAGIT for Cultural Industries) and Mr. Garry Neil (Coordinator, International Network for Cultural Diversity).

Each advocated continued Canadian action and most emphasized the pressing nature of time in the international arena. The four main options presented to Canada were: to continue to work for a UNESCO-based approach, to consider the inclusion of culture *within* trade agreements, to create a stand-alone instrument on the international stage, and to continue with domestic made-in-Canada programs. A mixture of these approaches might also be taken.

The Committee commends the works of the International Network on Cultural Policy (INCP), the International Network for Cultural Diversity (INCD), the Coalition for Cultural Diversity, and others who have been working towards a new international instrument on cultural diversity. **The Committee is of the view that the New International Instrument on Cultural Diversity should play a key role in the protection of Canada's cultural sovereignty. It therefore strongly endorses and commends efforts by the Canadian government, industry and creative associations** to promote measures at the international level that would guarantee the continued capacity of national governments to adopt and implement cultural policy without any interference from trade agreements. Accordingly:

RECOMMENDATION 17.1:

The Committee recommends that the Department of Foreign Affairs and International Trade maintain the government's position that culture not be part of any ongoing and future international trade negotiations.

B. International Cooperation and Coordination in Broadcasting Regulation

Notwithstanding assurances that our cultural sovereignty be protected, the Committee notes that the international arena represents an arena of considerable cultural significance, particularly in the areas of cooperation and coordination. Examples within the context of the Canadian broadcasting system include: international co-production agreements, the settlement of technical standards, and rules regarding business investment.[20]

Corporate broadcasting concerns revolve largely around flexibility in a globalized environment. CanWest Global told the Committee that it believes that Canadian companies should be able to look beyond our borders and participate in the broader international broadcasting regime. On this particular point a representative told the Committee that "[t]he formation and evolution of Canadian media companies able to compete internationally should be an explicit goal of public policy ... allowing flexibility in the face of rapid change"[21] Others, such as BCE, voiced support for international trade-rule relaxation as long as Canadians can enjoy material benefits.[22] The Canadian Association of Broadcasters (CAB) agreed, adding that investment incentives and international agreements should be reviewed, especially relating to co-productions, development, and promotion.[23] For AOL Time Warner, new international agreements to support protectionist infrastructures are not necessary because technological progress is allowing for a greater diffusion of diverse domestic audio-visual material: "...the Internet and global pressures generally, are not threatening Canadian identity and are, in fact, leading to greater and more effective levels of Canadian content and expression".[24]

In stark contrast to corporate concerns were those of civil society groups and creators. For these interests, the assurances of AOL Time Warner and others are not particularly comforting. Mr. R.H. Thomson, who appeared with ACTRA, explained that his group's opposition was not to foreign investment and trade agreements *per se*, but to the de-democratizing effect of delegating power to international treaty organizations or foreign owners that are disconnected from Canada's cultural concerns. A relaxation of any rules, it would follow, should not be signed until assurances are found to maintain Canada's rich tradition of government action in the name of cultural integrity. Mr. Thomson explained:

> [Canada's] public policies are increasingly at risk from the restrictions written into international trade agreements. These restrictions are a result of trade liberalization policies ...
>
> The political repercussion of trade liberalization ... is that the powers of my elected government ... are diminished, and my single democratic vote is downgraded.
>
> The repercussion for ... an artist is that the cultural measures that successive Canadian governments have put in place for the last two generations, which were in large part responsible for remarkable achievements in writing, publishing, broadcasting, film production, television production, and other artistic enterprises, are regarded by the trade liberalization lobby as either trade barriers or trade-distorting subsidies.[25]

Accordingly:

RECOMMENDATION 17.2:

The Department of Canadian Heritage should participate as fully as possible in any international discussions on broadcasting regulation.

The Committee further believes that such a process should involve civil society stakeholders, where appropriate.

C. Cultural Diversity

It is useful to point out that the word "diversity" shares a common meaning in English and French. The Oxford English Dictionary suggests: "Being diverse, unlikeness; different kind, variety." *Larousse* defines it as : "*caractère de ce qui est divers, variété. Différence, opposition*." Since the underlying sense in both official languages has to do with difference and variety, it should therefore come as no surprise that witnesses who appeared before the Committee used the term "diversity" in many different ways in their discussions of the Canadian broadcasting system. These various perspectives can be separated for discussion purposes accordingly: diversity of views, diversity of representation and diversity of sources.

What the Committee Heard

When distinguished scholar and former CRTC chair Professor John Meisel addressed the Committee, he stressed the need to see a diversity of views in our broadcasting system and made note of two approaches to cultural diversity:

> Canada's arts culture and what we might call our lifestyle cultures. Although paragraph 3(1)(*d*) [of the Broadcasting Act] does not explicitly refer to them in these terms, it unmistakably insists that broadcasting pay heed to them.
>
> Arts culture, in which I include high and popular culture, is extremely varied in the land but most unevenly treated on radio and television. Some genres receive extensive coverage and attention. Others are virtually invisible and inaudible. Variety, or divergence if you prefer, is horrendously neglected and should not be. There is no MuchMusic for minuets.
>
> By lifestyle culture I mean the patterns of values and behaviour exhibited by all sorts of groups linked by occupational activities, local pursuits, leisure activities, and other bonds that bestow on the groups shared experiences and often a sense of belonging. We talk of a business culture, a sports culture, an academic culture, and the culture of firms, corporate culture. It is striking that the broadcasting world lavishes an enormous amount of time on some of them, sports for example, and almost none on others. Consider, for instance, how important questions of religion are to a great many Canadians, and compare this with the attention — or I should perhaps say inattention — paid it by the broadcasting

> world. Are the myriad questions related to spirituality addressed remotely as effectively as those concerning sex or the consumption of automobiles or junk food?[26]

Other witnesses expanded on this definition. For example, McGill University Professor Will Straw suggested that a diversity of views would best be facilitated with a larger number of different programming sources:

> What I think is that diversity is not about us making programs in which every voice is represented, so much as it is about allowing a wider variety of sources of programming into Canada.[27]

Echoing this same perspective, Ms. Deanie Kolybabi, of the Aboriginal Peoples Television Network told the Committee:

> I would agree that cultural diversity is largely representative of a variety of attitudes of practices and beliefs stemming from human experience in heritage, in age, in gender, in spirituality — basically, from where we come.[28]

In his appearance before the Committee, Ryerson University Professor Matthew Fraser made the point that it is important to recognize that there are also generational differences that shape our views on culture and diversity. He explained:

> On the diversity issue in general, I would invite the committee members to come to Ryerson where I teach, and speak to my students, who are 18, 19, 20, 21, and 22 years old, and ask them how they consume media. I think most of this debate really is generational, and I would include myself, at 44, in the older generation. The elites today tend to be of that generation and older.[29]

Finally, most witnesses who appeared before the Committee during its hearings on cross-media and foreign ownership also mentioned the importance of having a diversity of ownership to ensure a diversity of views in the Canadian broadcasting system. Chapter 11 provides more on this perspective.

Apart from stressing the importance of having access to a diverse range of views, witnesses also talked about the need for a diversity of representations. This issue is similar to the question of regional and local reflection in the broadcasting system. In this case, however, the question is whether different ethnic and racial groups are reflected or represented in the programs that Canadians produce and watch. Section 3(1)(*d*)(iii) of the *Broadcasting Act* suggests that the Canadian broadcasting system should:

> Through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspiration, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of Aboriginal peoples within that society.

Thus, it was in the spirit of this requirement that several witnesses raised the question of representation.

Concerns about diversity of representation reflected the same types of concerns that many witnesses had about community and local reflection. That is: Do we hear and see ourselves in the media? Are there interviews, articles and stories by and about people from different groups?

Carleton University Professor Karim Karim gave perhaps the simplest explanation of this dilemma when he told the Committee:

> In terms of cultural diversity and what it may mean, the way I approach this for this particular purpose is that within the context of broadcasting we have perhaps come to think of it as the physical presence on television or radio of various groups living in Canada. And this may not be the complete resolution of the problem as the [A]ct may have seen it. First of all, in different kinds of programming there tends to be a preponderance of one or another ethnic group. In advertising, for whatever reason, you rarely see, for example, people of Latin American, Arab, or South Asian origin.[10]

Thus, the element he was underlining was the fact that we "rarely" see certain groups or types of people.

Ms. Deanie Kolybabi pointed out the scope of this reality for APTN: "In the case of APTN it's quite a challenge, because we have some 58 different cultures we are speaking to even when we're speaking to our own culture, our Aboriginal culture."[11]

Seen in another light, University of Calgary Professor Rebecca Sullivan told the Committee that she:

> … would like to … expand this notion of cultural diversity to consider such things as religion, as John Meisel pointed out, of sexuality and gender orientation, and of class and economics. When we deal with the question of diversity and attach this notion of culture to it we tend to avoid some of the real problems of social, political, and economic inequities and problems not merely in the way these different cultures are represented but in whether these groups are given access to the airwaves in an equitable fashion.[12]

By way of illustration, she discussed the way the specialty service, PrideVision, was first made available to cable subscribers in Calgary:

> During the digital cable rollout PrideVision was not given the same access as all the other stations, and it was not given that access based on some claim of community standards, namely we're only responding to the cultural needs of our audience. If you wanted PrideVision as part of the free package, you had to phone. … You had to keep asking for it, whereas all the other stations were considered suitably Canadian in that they would not offend community standards. Well this was prejudicial treatment whether we like it or not.[13]

The importance of respecting the cultural needs of the audience was also raised by Ms. Cynthia Reyes, Vice-President, ProMedia International Inc., who told the Committee that when her company interviewed over 300 Canadians about the Canadian media, many respondents:

> … many of [whom were] … from cultural minority communities, [expressed] … feeling isolated from the mainstream media. It didn't really matter what their backgrounds were; there was a sense of total exclusion from the mainstream media. They feel it's over there, they're over there, and the twain doesn't meet.[14]

She observed, however, that:

> In fairness, if you look at our news programs across the country, you will see that something is starting to happen. Whether that is happening because of the CRTC's requirements in the conditions of licence renewal or just because people are becoming more aware of the opportunities in doing such things, we're not sure. But something is happening, and we want to note that.[15]

That being said, Mr. Hamlin Grange, President, ProMedia International Inc., added that:

> There is a critical need for research to inform public policy initiatives regarding full reflection and accurate portrayal of cultural and social diversity in broadcasting. For example, new and accurate qualitative and quantitative data on media usage of ethnic groups is required.[46]

Finally, some witnesses suggested that cultural diversity is supported in part by having a large number of different sources of cultural artifacts (e.g., films and television programs). The following citation from Professor Will Straw captures well this particular perspective:

> … for me, diversity has become really interesting. It's not just about the range of choices; it's about the range of sources. …
>
> I think American programming and its audiences are already getting very fragmented. It's lost its centre. You don't go to school every day any more and talk about the same program because no one watches the same program. People who come to Canada from different places bring with them their old movies, their old music, and so on. The more we allow that to come, in a variety of ways, over time we're going to create a new version of Canadian culture that's going to be more global, but is actually going to be less and less American.
>
> I think that's kind of a compromise. We can't recentre Canadian culture any more either and expect everyone to be watching *Da Vinci's Inquest* or something else, but we can make the rich variety of Canadian culture probably different from American culture, and that will be our strength. I think that will make it also a very interesting place to be.[47]

In other words, Canada is in a unique position. By opening our doors to a range of sources, we would, in the view of Professor Straw, strengthen Canada's cultural diversity, not weaken it. And we would have a richer culture — one that is more receptive to the world and less drawn to American programming.

Potential Solutions

As a whole, witnesses were divided on what should be done to encourage the Canadian broadcasting system to reflect and represent Canadians to each other, particularly given the sheer number of different types and groups of people within Canada. Several witnesses, when asked directly about how well the Canadian broadcasting system has done to "strengthen the cultural, political, social and economic fabric of Canada," were quick to suggest it has been a success. For example, Professor John Meisel told the Committee that:

> I think the *Broadcasting Act* has been extremely successful. I say that because I'm trying to imagine what Canada would have been like without it. Without it, we would have had just a complete replica of American services, and that would be it. So I think in that sense, the [a]ct has been very successful.
>
> There are certain shortfalls, but the interesting thing is that the shortfalls are largely caused by the fact that the broadcasting system represents all too well the Canadian community. The things that are missing in the broadcasting system are also underplayed out there in the country.[38]

Similarly, Professor Karim Karim told the Committee:

> … on the whole, the [a]ct seems to be producing the kinds of results we want. When I look at the kind of diversity there is in the offerings in the 200-channel universe we have, it's remarkable. I don't know how many other countries have that.

And, much the same sentiment was echoed by Professor Rebecca Sullivan when she said:

> As much as we have this collective history of constant hand-wringing over Canadian broadcasting, I think Canada is incredibly well poised. … We probably have some of the most open and diverse airwaves in the world.[39]

On the other hand, many witnesses also raised a number of different, but related, problems with current and possible approaches to diversity and ownership. This situation prompted Mr. Kirk Lapointe to tell the Committee that it will be hard pressed to find a one-size fits all solution. He explained:

> [M]eeting the challenge of diversity is a remarkable uphill undertaking. It's not a matter of snapping one's fingers and making it true. It's not a matter of setting numerical targets, recruiting and promoting in particular ways, and tracking progress. It's a day-by-day grinding and methodical process that involves everyone in an organization in an unthreatening way building a more sophisticated media operation.[40]

Other witnesses agreed that a simple approach is unlikely to work. As University of Calgary Professor Bart Beaty told the Committee:

> One of the problems with cultural diversity is that we've had in the past a tendency to think that there's a way to make individual channels that the CRTC has reserved for minority voices ... that there's a way to make these perfectly. We believed that we could make this one channel that will speak to a particular subset of the Canadian population in a perfect fashion, that it will exactly represent what they want to see and how they want their voices to be heard. I don't think that's the case.[41]

Although some witnesses agreed with the idea that there should be a greater diversity of sources, at least two witnesses pointed out that there are substantial problems if one tries to run the entire broadcasting system on the basis of diversity as a paramount goal without paying suitable attention to other issues. For example, Ms. Deanie Kolybabi told the Committee that:

> If we in fact are going to look at culturally diverse programming, we need first, I think, to look at the measurements we are using to value these programs, these initiatives and, and in fact these networks. ...[42]

She went on to point out that the program funds (e.g., Telefilm and the CTF) are "largely triggered by Nielsen and BBM numbers"[43] and since these numbers do not truly measure Aboriginal audiences the APTN is put at a considerable disadvantage when it applies for funding. She concluded by saying:

> I think we need to be very careful that in embracing diversity we are not over-expecting, to the detriment of the business model [that] these programs and these networks need to survive.[44]

The business model was also on the mind of another witness, Mr. Kirk Lapointe, when he responded to a question from a Committee member about the financial viability of the industry in the "next five to ten years." Mr. Lapointe replied:

> I happen to know that it is a delicate balance, that it's not simply a matter of saying let's let every service into the country that doesn't have the same kinds of conditions attached to its broadcasting that we impose on those that are in this country.

> It would be absolutely catastrophic to do that. It may serve the consumer interests nominally, but increasingly it will lead to a diminution of the quality that already is there, and is already challenged and struggling, in Canadian programming. It's simply going to mean that those resources that are now being assigned will not be as available in the years ahead. It's a very simple equation.
>
> I don't know why the argument continues to be circular about this. It appears that we are missing the real point about the viability of conventional broadcasting in our country right now and what its challenges are going to be over the next five to ten years. If we permit further erosion of that, then we put at risk what little we have left around Canadian indigenous programming.[45]

Professor Bart Beaty also raised several points that support Mr. Lapointe's concerns about the ability of the broadcasting system to continue to provide indigenous Canadian programming. He explained:

> ... we're going to see fairly rapid technological change. We're beginning to see, for instance, the introduction of digital video recorders ... These focus the viewer's ability to select individual programs rather than channels. I think ten years from now programming will be much more important than channels. ...
>
> If we're going to have a sustainable industry in the future for Canadian content, we really have to look at placing subsidies that we already have and developing them more fully and aiming those toward supporting programming, rather than channels.[46]

In short, while the Committee heard a number of witnesses who offered convincing arguments that Canada's broadcasting policy and its approach to diversity has been successful, it also heard compelling evidence about the need to ensure that these policy expectations — as expressed in the *Broadcasting Act* — are met.

Section 3(*d*)(iii) of the Act states, for example that "the Canadian broadcasting system should ... through its programming *and the employment opportunities arising out of its operations* (emphasis added)... serve and reflect, among other things, the multicultural and multiracial nature of Canadian society." Witnesses suggested that this is not necessarily the reality. For example Ms. Cynthia Reyes told the Committee that:

> ... independent professionals, those who do not work inside the media and who are trying to get either their ideas or themselves into

> the media … [told them that] there's a dominant culture and language and a network of players inside the media that keeps them outside because they're not privy to that. They told us their skills are acquired outside of mainstream organizations, but even when they are mature professionals with solid skills and experience, they are only considered for entry-level jobs or short-term internships. They are not considered for senior-level or even intermediate roles in media organizations in the mainstream.[47]

The Committee notes that the *Broadcasting Act* also includes a range of policy provisions aimed at enhancing the diversity of the Canadian broadcasting system, and that it heard compelling testimony about the need to ensure that these provisions can be met. Many of the recommendations in this report address the issue of diversity in a number of different ways. For example, giving the proposed Canadian Broadcasting Monitor (see Chapter 19) the mandate to look at the overall state of the broadcasting system, asking the CRTC to re-examine where public service broadcasters such as APTN and VisionTV are located in cable and satellite line-ups (see Chapter 7), and the proposal for the creation of a Local Broadcasting Initiative Program (see Chapter 9) that would respond to local initiatives could all play a role in encouraging greater diversity in the system. The Committee also suggests in Chapter 18 that appointments to the CRTC and the CBC Board of Directors should reflect a greater diversity of views and experiences, while a proposal in Chapter 16 calls on Canada's broadcasting distributors to be permitted to provide more channels that would appeal to Canada's multiracial and multicultural populations.

The Committee, however, would like to supplement what is contained in these proposals with a call for additional funding to ensure that the *Broadcasting Act*'s provisions for greater diversity can be met. Indeed, the Committee sees it as essential that measures be taken to ensure that diversity remains a central tenet of the Canadian broadcasting system and its programming. Accordingly:

RECOMMENDATION 17.3:

The Committee expresses its support for increased funding for efforts to enhance diversity in Canadian broadcasting. The CRTC, the CBC and the Canadian Television Fund should seek ways to ensure that their policies and procedures reflect the need to enhance diversity.

Endnotes

[1] As part of its study of the Canadian broadcasting system the Committee held a special set of panels on cultural diversity in fall 2002. See Appendix 15 for the terms of reference used for these hearings.

[2] The final determination, after appeal, was made in 1999.

[3] Canadian Conference of the Arts, Brief, p. 12.

[4] Pierre Curzi, President, Union des artistes, Meeting of the Standing Committee on Canadian Heritage, 16 April 2002.

[5] AOL Time Warner Inc., Brief, p. 15.

[6] Canadian Motion Picture Distributors Association, Brief, p. 7.

[7] Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[8] See Public Notice CRTC 1994-61.

[9] Canadian Independent Record Production Association, Brief, p. 3.

[10] Alliance of Canadian Cinema, Television and Radio Artists, Brief, p. 4.

[11] Fédération nationale des communications, Brief, p. 23.

[12] Paul Spurgeon, Vice-President, Legal Services and General Counsel, Society of Composers, Authors and Music Publishers of Canada, Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[13] Canadian Broadcasting Corporation, Brief, p. 58.

[14] Meeting of the Standing Committee on Canadian Heritage, 8 November 2001.

[15] "Chair's Conclusions," http://206.191.7.19.

[16] For further information see www.incp-ripc.org.

[17] This was a key option recommended by the INCP's Special Policy Research Team (SPRT) on Governance Issues: "UNESCO would seem to be the (natural) benchmark agency to serve as a depositary for such an instrument in the medium to longer term". Inclusion within the WTO was deemed to be too difficult and the possibility of a stand-alone agreement was risky because of an "insufficient 'critical mass' of signatory countries" and because of a lack of funding. See http://206.191.7.19. A draft text of an international Instrument/Convention on Cultural diversity is also available: http://206.191.7.19.

[18] *Déclaration de Beyrouth*, IX^{e} Conférence des chefs d'État et de gouvernement des pays ayant le français en partage, 20 October 2002.

[19] Ibid.

[20] Co-productions are discussed in Chapters 5 and 8; the issue of foreign investment is discussed in detail in Chapter 11.

[21] Leonard Asper, President and Chief Executive Officer, CanWest Global Communications Corp., Meeting of the Standing Committee on Canadian Heritage, 1 March 2002.

[22] Meeting of the Standing Committee on Canadian Heritage, 7 May 2002.

[23] Meeting of the Standing Committee on Canadian Heritage, 21 March 2002.

[24] AOL, Brief, p.ii.

[25] Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[26] Meeting of the Standing Committee on Canadian Heritage, 21 November 2002.

[27] Ibid.

[28] Deanie Kolybabi, Director, Strategic Development and Marketing, Aboriginal Peoples Television Network, Meeting of the Standing Committee on Canadian Heritage, 21 November 2002.

[29] Meeting of the Standing Committee on Canadian Heritage, 26 November 2002.

[30] Meeting of the Standing Committee on Canadian Heritage, 21 November 2002.

[31] Ibid.

[32] Ibid.

[33] Ibid.

[34] Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

[35] Ibid.

[36] Ibid.

[37] Meeting of the Standing Committee on Canadian Heritage, 21 November 2002.

[38] Ibid.

[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] Ibid.
[43] Ibid.
[44] Ibid.
[45] Ibid.
[46] Ibid.
[47] Meeting of the Standing Committee on Canadian Heritage, 9 May 2002.

Part 4

STEERING THE SYSTEM

Chapter 18: Appointments and Conflicts of Interest
Chapter 19: Governance and Accountability
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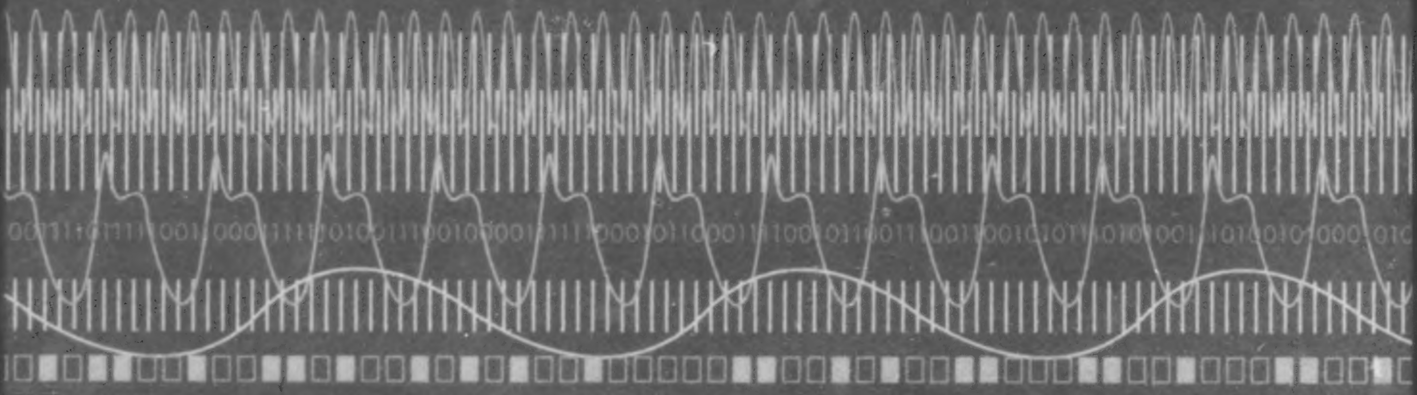


STEERING THE SYSTEM

Chapter 18

Appointments and Conflicts of Interest

This chapter deals with two issues about the overall organization of the Canadian broadcasting system: appointments to boards and conflicts of interest. It addresses concerns that the appointment of commissioners to the CRTC and of members to the Board of Directors of the CBC needs to be rethought. It also makes recommendations concerning the relationship between the CRTC and the industries that it regulates.

A. Background

To better respond to the increasingly complex process of legislating, administering, regulating, policy-making and decision rendering, Parliament has delegated some of its authority to specialized bodies. These boards, agencies, tribunals and commissions are composed of persons possessing particular expertise in a given area.

The theory behind the creation of these specialized bodies is that because of their particular expertise, they are better able to resolve the issues that arise in these specific areas. "For example, the CRTC is better able and has more time than Parliament to deal with the technical questions which arise in the course of the various applications made before that body."[1]

A further reason for establishing these bodies is to allow greater independence from political control and direction than would be found in regular government departments. The rationale underlying this independence is that "certain functions of government, to be performed efficiently, must be shielded from the constant interventions of politicians."[2] For example:

> ... the view emerged in Canada ... that such industries as transportation, telecommunications, and the distribution of energy were too important to be shaped solely by market forces. These industries were often monopolies or oligopolies wherein competitive forces were weak and where the public interest would

> suffer in the absence of government intervention. As a result, decisions were taken ... to regulate economic activity in key industries through the device of independent regulatory agencies.[4]

In addition to delegating the authority to act, Parliament usually also gives the particular body the authority to enact subordinate legislation, regulations, and other powers to assist in the performance of its duties. Although given authority to carry out certain duties, the gift of autonomy should not be seen as a shield that protects such an agency from being accountable. Indeed, the gift of autonomy includes a responsibility to be transparent and fully accountable.

Although a hallmark of these specialized bodies is their independence from government and freedom from political interference, it must be borne in mind that they are creatures of statute and their mandate, if not their very existence, may be changed by the legislature that created them in the first place.

Boards of Directors

Usually a board of directors, the principal decision-making body of the organization whose job it is to establish policy, will govern each of these specialized commissions.

Provisions for the appointment of directors will normally be included within the enabling legislation establishing or governing the particular commission or agency. Usually these will outline broad information only, such as the number of directors, their tenure of office, duties and disqualifications. For instance, the *Canadian Radio-television and Telecommunications Commission Act* provides for the establishment, constitution and appointment of members of the commission in subsections 3(1) through 5(2). As can be seen, this information is not very detailed:

> 3. (1) There is hereby established a commission, to be known as the Canadian Radio-television and Telecommunications Commission, consisting of not more than thirteen full-time members and not more than six part-time members, to be appointed by the Governor in Council.

> (2) A member shall be appointed to hold office during good behaviour for a term not exceeding five years but may be removed at any time by the Governor in Council for cause.
>
> (3) Subject to section 5, a member is eligible for re-appointment.
>
> R.S., 1985, c. C-22, s. 3; 1991, c. 11, s. 76.
>
> 4. A full-time member shall devote the whole of his time to the performance of his duties under this Act.
>
> 1974-75-76, c. 49, s. 4.
>
> 5. (1) A person is not eligible to be appointed or to continue as a member of the Commission if the person is not a Canadian citizen ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, the person
>
> (*a*) is engaged in a telecommunications undertaking; or
>
> (*b*) has any pecuniary or proprietary interest in
>
> (i) a telecommunications undertaking, or
>
> (ii) the manufacture or distribution of telecommunication apparatus, except where the distribution is incidental to the general merchandising of goods by wholesale or retail.
>
> (2) A member in whom any interest prohibited by subsection (1) vests by will or succession for the member's own benefit shall, within three months thereafter, absolutely dispose of that interest.

Similarly, the appointment, tenure, duties and accountability of directors of the Canadian Broadcasting Corporation are set out in subsection 36(2) through section 40 of the *Broadcasting Act*:

> 36. (2) There shall be a Board of Directors of the Corporation consisting of twelve directors, including the Chairperson and the President, to be appointed by the Governor in Council.
>
> (3) A director shall be appointed to hold office during good behaviour for a term not exceeding five years and may be removed at any time by the Governor in Council for cause.

(4) Subject to section 38, the Chairperson and the President are eligible for re-appointment on the expiration of any term of office but any other director who has served two consecutive terms is not, during the twelve months following the completion of the second term, eligible for appointment, except as Chairperson or President.

(5) Notwithstanding subsections (3) and (4), if a director is not appointed to take office on the expiration of the term of office of an incumbent director, the incumbent director continues in office until a successor is appointed.

37. Every director shall, before entering on the director's duties, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I, ..., do solemnly swear (or affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of .... (*Add, in the case where an oath is taken*, "So help me God".)

38. (1) A person is not eligible to be appointed or to continue as a director if the person is not a Canadian citizen who is ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, the person

(*a*) is engaged in the operation of a broadcasting undertaking;

(*b*) has any pecuniary or proprietary interest in a broadcasting undertaking; or

(*c*) is principally engaged in the production or distribution of program material that is primarily intended for use by a broadcasting undertaking.

(2) A director in whom any interest prohibited by subsection (1) vests by will or succession for the director's own benefit shall, within three months thereafter, absolutely dispose of that interest.

39. Subject to this Part, the Board is responsible for the management of the businesses, activities and other affairs of the Corporation.

40. The Corporation is ultimately accountable, through the Minister, to Parliament for the conduct of its affairs.

The provisions for the appointment of directors to such other cultural boards and agencies as the national museums and the National Arts Centre are much the same in terms of the limited information they offer.[4]

The method of appointment of the chairperson of any given board or commission varies under the enabling legislation. For example, under the *Broadcasting Act*, the chairperson of the board of directors of the CBC is appointed by the Governor in Council.[5] Similarly, the *Canadian Radio-television and Telecommunications Commission Act* stipulates that the chairperson of the CRTC is designated by the Governor in Council.[6] The chairperson of the board of trustees of the national museums and national gallery is appointed by the Minister responsible, with the approval of the Governor in Council.[7]

Governor in Council and Orders in Council

Each statutory provision for the appointment of directors and chairpersons indicates that such appointments will be made either by the Governor in Council[8] or by the appropriate Minister with the approval of the Governor in Council.[9] The Governor in Council is the Governor General acting by and with the advice and consent of the Cabinet; that is, the federal Cabinet.

Appointments by the Governor in Council are made by an order in council. An order in council is a particular kind of subordinate legislation issued by the Governor in Council indicating that the Cabinet has taken a particular decision. An order in council appointment must be tabled in the House of Commons and the appointment may be reviewed — but not revoked — by a committee of the House. Thus, an order in council appointment of a member to the Board of Directors of the CBC or the CRTC may be examined by the House of Commons Standing Committee on Canadian Heritage.

The Privy Council Office provides further information on the terms and conditions of employment for full time Governor in Council appointees. Here the information is somewhat more detailed than that found in the enabling legislation:

II. APPOINTMENT, TENURE AND RELATED MATTERS

Appointments are made by the Governor in Council, that is by the Governor General on the advice of the Queen's Privy Council as represented by Cabinet, through an Order in Council which normally specifies the term and tenure of the appointment. The salary on appointment is either included in a schedule to the appointing Order in Council or in a schedule to a separate Order in Council for a class of positions in an organization. An individual's salary is protected as personal information, in accordance with provisions of the *Privacy Act*.

Appointments are for either a fixed term or an indeterminate period and their tenure is either "during good behaviour" or "during pleasure". Appointees who hold office during good behaviour may be removed by the Governor in Council for cause. Appointees who hold office during pleasure may be replaced or removed at the discretion of the Governor in Council.

When a term is specified in an Order in Council, the appointment ends at its expiration, unless there is a legislative provision to the contrary. The appointee may be reappointed to the same position, but since appointments are made at the discretion of the Governor in Council, renewal is not automatic. In some cases, statutory provisions prohibit the reappointment of an appointee to the same position.

Where no term is specified, appointees continue in office until they resign, are appointed to another position, are replaced or are removed from office. *The Public Service Staff Relations Act*, which normally governs employer/employee relations in the public service, does not apply to "a person appointed by the Governor in Council under an Act of Parliament to a statutory position described in that Act". As a result, appointees are not subject to collective bargaining or grievance arbitration.

When a Governor in Council appointee resigns, the letter of resignation should be sent to the agency head, the responsible minister or the Clerk of the Privy Council, as applicable.[10]

Can Parliament Change the Process?

Because an order in council is subordinate legislation, it can be easily superseded by a later order. Therefore, an order in council appointment may not necessarily run its entire anticipated life. Indeed, this very eventuality is specifically contemplated in some of the enabling legislation. For example, the *Canadian Radio-television and Telecommunications Commission Act* states that the member appointed to a position "may be removed at any time by the Governor in Council".[11]

Moreover, under the British doctrine of parliamentary sovereignty which Canada inherited, Parliament can make or unmake any law it sees fit, provided it has the constitutional jurisdiction to do so. Therefore, assuming this jurisdictional competence, Parliament has the ability to enact, repeal or modify legislation concerning the appointment of members of boards of cultural organizations and agencies. Indeed, as the boards and commissions themselves are creatures of statutes and thus liable to change, their very structure, composition and existence could be altered by Parliament.

B. What the Committee Heard

The House of Commons Standing Committee on Canadian Heritage heard from a number of witnesses on the issue of the composition of boards of directors of cultural agencies and organizations. The starting point of the discussions was provided by Mr. Michael Wernick, Assistant Deputy Minister, Cultural Development, Department of Canadian Heritage, who had this to say about the membership of the boards of the CBC and CRTC:

> It's the government in any case that chooses the board of directors of the CBC, who are there for some kind of public oversight, that chooses the CEO of the CBC and all the members of the CRTC. So ultimately these are people who the government has chosen to supervise the system.[12]

However, numerous witnesses appeared before the Committee to express concerns with this particular appointment process.

Several witnesses spoke to the need for a more open, transparent and objective method of appointing board members. For example, speaking of appointments to the CRTC, Mr. Arnold Amber, Director, Newspaper Guild of Canada, said:

> I think the process whereby Governor in Council, the government, appoints somebody to be the CEO of this corporation, and people are selected for the CRTC in various ways that one doesn't quite understand — certainly there is not an open method of selection — must come to an end.
>
> If we are talking about an industry ... that has billions of dollars, the regulatory body, the CRTC, must be selected in an open manner. I recommend that you read our brief. We go to great lengths in discussing governance, the way governance should be set up for the CRTC, and the way governance should be set up for Radio Canada. It's the least we owe the Canadian people to say that to defend your culture in this country, the regulatory body will be selected by an open method. We also owe it to them to say that in this country, for your national public broadcaster, the people who run and make policy will be selected in an open fashion as well.[13]

Similarly, Mr. Ian Morrison, spokesperson, FRIENDS of Canadian Broadcasting, said that appointments to the CBC board do not "have to be done out of the Prime Minister's Office without consultation."[14] Rather:

> FRIENDS recommends that the Committee consider an arm's-length appointment process for members of the CBC Board of Directors, drawn from the advice of eminent Canadians, such as, for example, Officers and Companions of the Order of Canada. We note that such an arm's-length process could guide an appointment process under the authority of the Privy Council.
>
> With an appropriately skilled Board in place, FRIENDS recommends that the Board of Directors itself, rather than the Governor-in-Council, have the authority to hire and fire the President and CEO, akin to the powers of private sector Boards. Alternatively, the Governor-in-Council could appoint the President on the recommendation of the CBC's Board.[15]

Mr. Digby Peers told the Committee that he would like to see the methodology of the appointment process:

> ... revisited, so those people who are up for appointment or in the stream for a possible appointment to the board of directors of the Canadian Broadcasting Corporation have a new set of criteria and a

> new set of guidelines and can look in the mirror and say to themselves, "I would make a good director of the Canadian Broadcasting Corporation" — because we're almost always disappointed by the board of directors of the CBC.[16]

A possible difficulty with the present method of appointing directors is the perception that a director's allegiance may be compromised:

> Because directors owe their allegiance to the government, their capacity to operate with independence is limited. It means that even those directors who are by all accounts competent for the job still arrive in the job hindered in their capacity to be perceived as carrying out their responsibilities without at least the perception of bias. That is, the very same people, appointed in another way, might make substantially better contributions.[17]

Several witnesses spoke of a perception of partiality on the part of the CBC and CRTC and that their boards were biased in favour of broadcasters and the broadcasting industry. For example, Mr. Arthur Simmonds, National Representative, Communications, Energy and Paperworkers Union, expressed the view that the "CRTC as it is currently constituted is an unmitigated failure, except in the eyes of a very small group of broadcast licence owners."[18] He further stated that:

> I don't think that we need to reinvent the wheel, but I think that we need to take a look at how the CRTC functions and whether or not it can.... I guess what we're saying is that we believe that the CRTC is just too close to the broadcasters.[19]

Another view suggested that board memberships are too closely aligned to the governing party of the day:

> Right now, notwithstanding the comments of my colleague and friend, the process is a closed one. Certainly, members of the Liberal caucus are invited to submit their advice, and no doubt, upstairs their advice is given what would be called "due consideration". But look at the results right now. In fact, just to take a shot at another political party, one that you're recently affiliated with, 12 years ago the board of directors at CBC was entirely, at one point, people affiliated with the Progressive Conservative Party. That is not the case today. The board of directors of the CBC, from our research, is entirely affiliated with the Liberal Party of Canada. That is not in the public interest, for a number of reasons. One reason is that we want the public broadcaster to be at arm's-length from government,

> and if the supporters of the governing party are the only people around its board, it pushes down to management the defence of the journalists and the creative people from political interference.
>
> I would just point out that this is not something Friends of Canadian Broadcasting has thought up and is beginning to advocate. I'd like to quote to you a recommendation from Pierre Juneau, Peter Herrndorf, and Professor Catherine Murray of the mandate review committee of 1996, where they gave a lot of good advice about reforming the appointments process. They said this about the CBC:
>
> "Finally, we believe that Board members with a strong political background can provide some clear benefits. We want to stress, however, that the integrity of the Board and the independence of the Corporation would be enhanced if directors with known political affiliations represented the full political spectrum and not just the governing party. We note that this pattern has been followed by successive British governments and has, in our view, helped to preserve the BBC's independence and prestige."[20]

The Canadian Media Guild and The Newspaper Guild of Canada share this view that the board of directors of the CBC has a political affiliation. In their written submissions to the Committee they assert that:

> Most CBC Board members, like other Crown corporation appointees, have been drawn from the ranks of those politically connected to the government. Sometimes they arrive with appropriate expertise. All too often they do not.[21]

Yet another witness suggested that broadcasting regulatory boards would benefit from a more diverse membership:

> We ask that the committee establish guidelines directing the broadcast and cable industry toward a composition of their boards of directors, senior decision-makers, and advisory boards that reflects the cultural diversity of their local community.[22]

Several witnesses also provided the Committee with suggestions for change to the appointment process. Ms. Megan Williams, National Director, Canadian Conference of the Arts, suggested that the board of directors of the CBC should be able to review applications and hire their own president.[23] She stated that:

> We would also like to see the *Broadcast[ing] Act* amended so that the CBC board of directors would be able to choose its own president. We think that the board is sometimes compromised by not being able to select its own president.
>
> Let me be clear. The chair of the CBC board is appointed by the Prime Minister, as is the president. It's the president I'm talking about, not the chair, and it's because I believe the public broadcaster has an important status and has to be at some distance from government. The board appointments are always very high-profile people with a lot of knowledge, and if I were a member of that board, I would want to be responsible for choosing the president who suited our board.
>
> That board is just as likely to find a suitable president as the Prime Minister's Office is, and would be less conflicted about political agendas when they did so. I think having a president who was not conflicted by political agendas would be very important for our public broadcaster.[24]

Another suggestion would see candidates for appointment to the board of directors for the CBC interviewed for the position by the House of Commons Standing Committee on Canadian Heritage. The Committee would then forward a list of candidates to Cabinet, which would continue to make the appointments.[25] Ms. Lise Lareau, President, Canadian Media Guild, appeared before the Committee to further develop this proposal:

> The Act should stipulate that applicants to the board of directors of CBC would have to all be interviewed openly by you, the heritage committee, and the committee would ultimately forward a list of candidates to the cabinet. I consider this really to be a Canadian compromise on what is now in place in, say, the U.K. model, in which it's even more public than that. More importantly, the board of directors itself would have the power to select the president, something it doesn't have now.[26]

It is worth noting that both Australia and the United Kingdom have recently revisited the method of appointing directors to the board of directors of their public broadcasting corporations. With this in mind, the next sections examine their conclusions.

C. The Appointment Process in Australia

Many of the issues raised before the House of Commons Standing Committee on Canadian Heritage mirror those raised in a 2001 review of the appointment process in Australia. In a document entitled *Above Board? Methods of appointment to the ABC Board*, the Senate Environment, Communications, Information Technology and the Arts Reference Committee report stated:

> Certainly, based on the submissions received by the Committee, there is a strong public perception that the Board has been politicised, and to a lesser extent, that its membership is not suitably representative. The Chair considers that this perception in itself, leads to the inevitable conclusion that the Board is not representative, and therefore this undermines public confidence in the Board and its efforts to uphold its legal obligations. It further raises questions for the way the Executive appoints members to other Boards and the role the Parliament should have in overseeing these appointments. …
>
> The overwhelming view of the submissions received by the inquiry was that the ABC has become politicised, has lost its independence, and accordingly, has lost the confidence of the public.[27]

The general method of appointment to the Australian Broadcasting Corporation (ABC) board as set out in the current *Australian Broadcasting Corporation Act 1983* is similar to that of the CBC. The Chair, Deputy Chair and directors are appointed by the Governor General, and the Managing Director is appointed by the board.[28] The Act does provide for a staff-elected director; that is, one of the director's seats is reserved for a member from and elected by the ABC employee group.[29] With respect to the appointed directors, it was recommended that:

> … the method of Board appointments be altered to embrace a system characterised by the principles of merit and transparency, in order to deal with the widespread public perception that appointments to the ABC Board are made on the basis of political affiliation rather than on merit alone.[30]

The Australian Senate committee investigating the appointment process identified several key principles that should form the foundation of a system of appointments:

- competitive selection based exclusively on merit;
- support for equal opportunity and the diversity of the Australian community;
- openness and transparency; and
- costs and procedures that are practical and proportional to the nature of the position.[11]

The report further stated that "[t]ransparency in particular is considered to be the most important characteristic, with the view that secrecy should be very much the exception rather than the rule."[12]Moreover, the report recommended that formal selection criteria be developed by an independent agency as a first step in this new appointment process.[13]

The report also had specific recommendations as to the development of a field of candidates for board positions:

> By far the greatest support is for public advertisements calling for applications to Board positions. This mirrors the procedure for public service vacancies, and is also an element of the Nolan Rules [used in the United Kingdom for appointments to public bodies]. It is also the most transparent and fair: it enables anyone with an interest in serving on the Board to apply, without limiting the capacity of any group to encourage skilled people to apply as well.
>
> The Chair endorses this view and recommends accordingly.[14]

The study then reviewed a number of ways in which final appointments might be made, including appointment by the Minister assisted by the department appointment by an independent body, the Parliament and direct election. After assessing each of these methods, the report recommended that

- an independent selection panel shortlist applications, and forward a list of at least two candidates to the Minister, together with the candidates' applications and declarations of political affiliation.
- the short list of candidates, together with a summary of their qualifications against the selection criteria and their statement of political affiliation, be public.

- the Minister should not be obliged to select any of the candidates recommended by the selection panel. However, the Minister must not select a candidate who has not first been scrutinized by the independent selection panel.[35]

It was further recommended that the board itself elect its Chair and Deputy Chair from its membership as "a concrete and visible measure of the Board's independence".[36] At present, the *Australian Broadcasting Corporation Act 1983* provides that the Chair and Deputy Chair are appointed by the Governor General.[37]

D. The Appointment Process in the United Kingdom

The Australian report, in turn, was built upon the foundations laid by a study done in the United Kingdom examining the process of appointing directors to public bodies, a group that includes the British Broadcasting Corporation (BBC).

The BBC is a corporation that was established and continues to operate under a succession of royal charters. The current charter, dated 1 May 1996 and continuing until 31 December 2006,[38] provides that the Corporation shall be overseen by a board of 12 governors appointed by the Governor in Council.[39] Regional representation is ensured by the requirement that national governors for each of Scotland, Wales and Northern Ireland are included among the 12 governors.[40] The Director General of the Corporation (equivalent to the President of the CBC) is appointed by the governors.[41] However, this basic appointment criteria must be set against an overarching framework of appointments to public bodies in general.

Specific appointment criteria were created in 1995 in response to great difficulties in the U.K. public body appointment process. The U.K. Committee on Standards for Public Life, which was chaired by Lord Nolan, developed a model which has since come to be termed the "Nolan Rules" for making senior appointments to public sector organizations.[42] These rules have come to be seen to represent international best practice. They focus on a code of practice, seven principles of public life, and a procedural model administered by a Commissioner for Public Appointments. *The Code of Practice for Ministerial Appointments to Public Bodies*[43] sets out detailed information designed to regulate, monitor and report on ministerial appointments to specific bodies, including the British Broadcasting Corporation. The Code of Practice:

> sets out the regulatory framework for the public appointments process and is based upon seven principles as recommended by the Committee on Standards in Public Life. It aims to provide departments with a clear and concise guide to the steps they must follow in order to ensure a fair, open and transparent appointments process that produces a quality outcome and can command public confidence.[44]

The seven principles of public life that underpin the Code of Practice and are designed to ensure appointment on merit and quality of outcome[45] are:

> Ministerial responsibility: The ultimate responsibility for appointments is with ministers.
>
> Merit: All public appointments should be governed by the overriding principle of selection based on merit, by the well-informed choice of individuals who through their abilities, experience and qualities match the need of the public body in question.
>
> Independent scrutiny: No appointment will take place without first being scrutinised by an independent panel or by a group including membership independent of the department filling the post.
>
> Equal opportunities: Departments should sustain programmes to deliver equal opportunities principles.
>
> Probity: Board members of public bodies must be committed to the principles and values of public service and perform their duties with integrity.
>
> Openness and transparency: The principles of open government must be applied to the appointments process, its working must be transparent and information provided about the appointments made.
>
> Proportionality: The appointments procedures need to be subject to the principle of proportionality, that is they should be appropriate for the nature of the post and the size and weight of its responsibilities.[46]

The Appointment Procedure

The appointment procedure is a detailed process and includes a requirement that role and person specifications be produced for "each and every appointment as member, chair or deputy chair of a public body."[47] These specifications cannot be assumed to remain unchanged and must be revisited for each subsequent appointment to the same body.[48] Subject to a satisfactory performance review,[49] reappointment is possible;[50] however, "the maximum period in office must not exceed 10 years on the same board."[51]

In order to "ensure a demonstrably fair and open process" and as "diversity is an essential element on public bodies", vacant positions on the boards of public bodies must be broadly advertised to reach a wide range of potential candidates.[52] In addition, anyone — including government Ministers and officials — may suggest names of potential candidates; however, regardless of the way in which a candidate is brought forward, all applicants must go through the same formal application process, including completing an application form. [53]

The selection stage of the appointment process concerns the identification and selection of appointees. To maintain the principles of appointment on merit and equal opportunity and diversity, independent assessors are involved at this stage.[54] The independent assessor reviews the earlier stages of the process and must be directly involved in shortlisting and interviewing candidates. Appointments to significant public bodies such as the British Broadcasting Corporation warrant the involvement of an advisory or scrutiny panel which oversees the key stages of the appointment process. The panel membership includes "an official from the department, a representative of the public body or other interested group, as appropriate, but must include at least one independent assessor."[55]

Applicants for appointment to public bodies must answer a standard question on political activity. This question is designed to allow for the monitoring of political activity of candidates for public appointment "in so far as it is already in the public domain"[56], such as whether the candidate has ever held or sought public office. The question does not seek personal or private information or voter preference. The political activity question is reproduced here as Appendix 16.

All shortlisted candidates must have been satisfactorily assessed against the publicized selection criteria. The final decision on appointment lies with the Minister responsible. However:

> … the overriding principle remains appointment on merit and no candidate can be recommended to ministers unless they have been judged as suitable against the established selection criteria;
>
> ministers will wish to balance boards in terms of diversity as well as skills and experience; consequently, departments may recommend that ministers appoint any candidate who has fully met the selection criteria in order to assist in achieving a desired balance on a board's membership;
>
> under **no** circumstances, however, should a candidate who has been judged unsuitable for an appointment be recommended in order to achieve that balance on a board.[57]

The Code of Practice contains additional criteria for auditing compliance with the Code,[58] as well as a complaints procedure,[59] and procedures for compiling annual statistics and information on appointments.[60]

Recent U.K. Legislative Initiatives and the Appointment Process

It is worth noting that the United Kingdom has recently introduced legislation with the aim of substantially reforming the communications sector, including broadcasting. The new United Kingdom Communications Bill was introduced in the House of Commons in November 2002.[61] Notably, the new legislation proposes transferring regulatory responsibilities from five bodies or office holders in the communications sector to a newly created body, OFCOM (Office of Communications). The five agencies ceding regulatory control are:

> 1. The Broadcasting Standards Commission, a non-departmental public body which has statutory responsibilities for standards and fairness in broadcasting. It has three main tasks, as established by the *Broadcasting Act 1996*. These are to produce codes of conduct relating to standards and fairness; to consider and adjudicate on complaints; and to monitor, research and report on standards and fairness in broadcasting;

> 2. The Director General of Telecommunications, who is responsible for running the Office of Telecommunications (Oftel) — the U.K. telecommunications regulator. Oftel is a non-ministerial government department. The Director General is responsible under the *Telecommunications Act 1984* for administering and enforcing the licences that regulate telecoms operators. His duties include those of ensuring that adequate telecommunications services are provided throughout the U.K.; of promoting the interests of consumers; and of maintaining effective competition;
>
> 3. The Independent Television Commission, the statutory body which licences and regulates independent television services in the U.K., including cable and satellite. Operating under powers derived from the Broadcasting Acts 1990 and 1996, their responsibilities include setting and maintaining the standards for programmes, economic regulation, public service obligations, research, advertising and technical quality;
>
> 4. The Radio Authority, which is the statutory body responsible for regulation and licencing of independent radio broadcasting in the U.K., that is to say all non-BBC radio services. Operating under powers derived from the Broadcasting Acts 1990 and 1996, their responsibilities include frequency planning, the awarding of licences, the regulation of programming and radio advertising, and the supervision of the radio ownership system; and
>
> 5. The Secretary of State, who has a regulatory role in respect of the allocation, maintenance and supervision of non-military radio spectrum in the U.K.. This role is exercised through the Radiocommunications Agency, an executive agency of the Department of Trade and Industry.[62]

Thus it appears that the present format and composition of the BBC Board of Governors would remain unchanged by the new legislation. The manner of appointment to the board, governed as it is by the procedural model administered by the Commissioner for Public Appointments, would also remain unchanged.

E. Proposed Solutions

Appointments

The Committee heard witness testimony that raised many of the same concerns as those expressed in the recent United Kingdom and Australian studies into appointments to public bodies. Indeed, transparency, accountability and an arm's-length relationship with the government were of paramount concern. Therefore, **the Committee believes that it is both appropriate and necessary that criteria and guidelines be developed for nominations to the CRTC and the CBC. For example, in the interests of fuller accountability and arm's-length from government, nominations to the CBC Board should be made by a number of sources, and the CBC President should be hired by and be responsible to the Board.** Accordingly:

RECOMMENDATION 18.1:

The Committee recommends that the Department of Canadian Heritage, in consultation with the Standing Committee on Canadian Heritage, develop criteria and guidelines by 30 June 2004, governing the nomination of CRTC commissioners as well as members to the Board of Directors of the CBC.

Furthermore, the Committee heard witness testimony concerning the number of CRTC commissioners. Numerous witnesses suggested that the current composition of 13 full-time commissioners, including 6 regional commissioners who live in their representative regions, has created problems in decision-making. Some contend that the regional commissioners tend to focus their decisions on their own regions and not view the system through a national lens, resulting in fragmented policies that place national interests at odds with those of the regions. Moreover, decisions made by hearing panels composed of ever-shifting memberships leads to confusing and complicated rulings. Such a system makes consistency and rationality difficult to predict, to the detriment of the industry and the Canadian public in general. It was suggested that a smaller, more-focused Commission would be more capable of efficient and effective decision-making and keep a national focus on the issues. Thus, it was suggested that there be a reduction in the number of commissioners and that regional commissioners be abolished, but that

Commission membership be drawn from across the country to develop national policies. Therefore:

RECOMMENDATION 18. 2:

The Committee recommends that the CRTC be reduced in size from 13 to 9 commissioners and that the abolition of regional commissioners be considered. Proper consideration should also be given to ensuring that there is a linguistic and regional balance and that a diversity of viewpoints and experiences is reflected in the membership.

The Committee recognizes that a review of the CRTC's structure and functioning will be required prior to the implementation of this recommendation. This matter is discussed in Chapter 19.

Conflicts of Interest

A continuing problem is the perceived close relationship between the Commission and the industries that it regulates. Some critics worry that a revolving door exists which allows those serving on the Commission to come from industry or law firms that deal with the Commission and then go back to industry after their terms are over. Supporters of the current situation argue, however, that appointees are inevitably drawn from a relatively small pool of people who have highly specialized knowledge and experience. The vast majority of potential candidates will be people who have had some experience in industry. Indeed, knowing the players and being able to see issues from the vantage points of those who are actually delivering broadcasting and communication services to Canadians can have great advantages. Still, the perception remains that the Commission is rife with potential conflicts of interest.

Although it is noteworthy that Professor Schultz, in a report prepared for the Committee, found little evidence that a problem exists, it is prudent to ensure that some "firebreaks" are in place. Professor Schultz also notes that while Cabinet ministers are prohibited from contacting Commissioners about issues that are before the Commission, similar rules do not apply to those representing industry. Another nagging problem is that while commissioners and former staff members are prohibited from being employed by regulated companies for a year after they have left the Commission, this freeze is fraught with difficulty. Having to remain "on the shelf' for a year may discourage well-qualified people from taking appointments because their re-entry will have caused too much difficulty and loss of income.

On the other hand, critics argue that one year is not enough to ensure that a conflict of interest or unfair advantage does not take place. **The Committee therefore wishes to make a strong statement about the need for the CRTC to maintain an arm's-length relationship with those whom it regulates. Furthermore, the Committee reaffirms the importance of ensuring that an arm's-length relationship is maintained between the CRTC and the broadcasting industry. The provisions of the government's *Conflict of Interest Code for Public Office Holders, the Lobbyists Registration Act* and Lobbyists Code of Conduct should be seen as minimum legal and ethical standards.**

The Committee would also like to see the appearance of neutrality strengthened and enhanced. Accordingly:

RECOMMENDATION 18.3

The Committee recommends that to avoid an actual or potential conflict of interest or unfair advantage or the appearance of it, a person who resigns or otherwise ceases to hold office as a member or senior staff employee of the Canadian Radio-television and Telecommunications Commission shall not hold a paid or unpaid position within an industry regulated by the CRTC for a period of two years after their employment or membership ceases. This requirement shall be made a condition of Commission employment or membership. During this time, they should receive up to 75% of their regular salary if they are unable to find suitable employment other than in the broadcast industry.

Endnotes

[1] G. Gall, *The Canadian Legal System*, 4th edition (Scarborough: Thompson Canada Limited, 1995), p. 436.

[2] A. Tupper, "The Civil Service", in T. Pocklington, *Representative Democracy: an introduction to politics and government* (Toronto: Harcourt Brace and Company, 1994), p. 251.

[3] Ibid.

[4] See sections 18 through 22 of the *Museums Act*, 1990, c. 3 for appointments to the Board of Trustees of the National Gallery of Canada, the Canadian Museum of Civilization, the Canadian Museum of Nature, the National Museum of Science and Technology, and sections 4 and 5 of the National Arts Centre Act, chapter N-3, for appointments to the Board of Trustees of the National Arts Centre Corporation.

[5] See subsection 36(2) of the *Broadcasting Act*.

[6] See subsection 6(1) of the *Canadian Radio-television and Telecommunications Commission Act*.

[7] See subsection 19(1) of the *Museums Act*.

[8] See subsection 36(2) of the *Broadcasting Act*, subsection 3(1) of the *Canadian Radio-television and Telecommunications Commission Act*, and subsection 4(2) of the *National Arts Centre Act*.

[9] See subsection 19(2) of the *Museums Act*.

[10] *Terms and Conditions of Employment for Full-Time Governor in Council Appointees*, Government of Canada, September 2002, Privy Council Office Web site, www.pco-cp.gc.ca.

[11] See subsection 3(2) of the *Canadian Radio-television and Telecommunications Commission Act*.

[12] Meeting of the Standing Committee on Canadian Heritage, 20 November 2001.

[13] Meeting of the Standing Committee on Canadian Heritage, 27 November 2001.

[14] Meeting of the Standing Committee on Canadian Heritage, 29 November 2001.

[15] FRIENDS of Canadian Broadcasting, Brief, p. 17-18.

[16] Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[17] The Canadian Media Guild and The Newspaper Guild of Canada, Brief, p. 36.

[18] Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[19] Ibid.

[20] Ian Morrison, Meeting of the Standing Committee on Canadian Heritage, 29 November 2001.

[21] The Canadian Media Guild and The Newspaper Guild of Canada, p. 35.

[22] Sid Chow Tan, Vice-President, Vancouver Association of Chinese Canadians, Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[23] Meeting of the Standing Committee on Canadian Heritage, 23 April 2002.

[24] Ibid.

[25] The Canadian Media Guild and The Newspaper Guild of Canada, p. 31.

[26] Meeting of the Standing Committee on Canadian Heritage, 11 April 2002.

[27] *Above Board? Methods of Appointment to the ABC Board*, Report of the Senate Environment, Communications, Information Technology and the Arts References Committee (Australia) (Canberra: The Senate [Australia], 2001), p. 7.

[28] *Australian Broadcasting Corporation Act 1983*, subsections 12(2), (3) and 13(1).

[29] *Australian Broadcasting Corporation Act 1983*, section 13A.

[30] *Above Board?*, Recommendation 1, p. 19.

[31] Ibid, p. 30.

[32] Ibid.

[33] Ibid, Recommendation 5, p. 31. See also recommendations 6, 7 and 8.

[34] Ibid, p. 32. See also Recommendation 9.

[35] Ibid, p. 33-39.

[36] Ibid, p. 40. See also Recommendation 10.

[37] *Australian Broadcasting Corporation Act 1983*, subsection 12(3).

[38] Department of National Heritage, Broadcasting, Copy of the *Royal Charter for the continuance of The British Broadcasting Corporation*, 1 May 1996, www.bbc.co.uk.

[39] Ibid.

[40] Ibid.

[41] Ibid.

[42] *See the Summary of the Nolan Committee's First Report on Standards of Public Life*, www.archive.official-documents.co.uk.

43 The Commissioner for Public Appointments, *Code of Practice for Ministerial Appointments to Public Bodies*, Office of the Commissioner for Public Appointments, July 2001, www.ocpa.gov.uk.

44 Ibid.

45 Ibid.

46 Ibid.

47 Ibid.

48 Ibid.

49 Ibid.

50 Ibid.

51 Ibid.

52 Ibid.

53 Ibid.

54 Ibid.

55 Ibid.

56 Ibid. See also Appendix 16, which sets out the full text of the political question to be included in every application form.

57 Ibid. Emphasis in original.

58 Ibid.

59 Ibid.

60 Ibid.

61 www.parliament.the-stationery-office.co.uk.

62 Communications Bill: Explanatory Notes.

STEERING THE SYSTEM

Chapter 19

Governance and Accountability

> **Perhaps because of the failure to state the objectives and purposes of our broadcasting system clearly and simply, the positive values of our achievement have not always been recognized. The governing statutes are far from clear and the fundamental nature of the system has remained open to endless controversy and debate.**
>
> ***Royal Commission on Broadcasting, 1957***

A. Introduction

The 1991 *Broadcasting Act* spells out the key principles of Canadian broadcasting policy, identifies the main elements and establishes two public institutions: the CRTC and the CBC. However, as this report has noted on several occasions, there is no mechanism provided for regular evaluation of how well the objectives spelled out in the Act are actually met.

The challenge of understanding what the *Broadcasting Act* means, or intends, was raised by witnesses on many occasions. It was also raised in a background paper prepared for the Committee by Professor Richard Schultz, who describes the objectives for the system, when taken together, as a "policy morass."[1] This lack of precision about objectives is a governance issue, not a broadcasting issue, and is a thread that runs through much of the witness testimony and, not surprisingly, through much of this report.

This chapter begins with a brief discussion of how governance and accountability operate in a parliamentary democracy. It then describes a number of problems with the governance of the Canadian broadcasting system. Thereafter, it argues that the current "morass" has evolved over a long period of time, beginning with how the recommendations in the Aird report of 1929 were implemented. In response to these problems the chapter contains a suite of recommendations that if implemented would do much to resolve current inadequacies in governance and accountability in the Canadian broadcasting system.

B. Governance

Canadian citizens live within a governmental system described as a parliamentary democracy. It is also a federal system, where powers are shared with provinces and territories. The Crown (represented by the Governor General at the federal level) is the head of state. The Prime Minister is the head of the party that won the most seats. The Prime Minister chooses a Cabinet. Once sworn into office the Prime Minister and the Cabinet form the Executive of the government.

The Constitution lays out some of the roles and responsibilities of governments, but it is silent on many important points. For example, it does not mention premiers or the office of the prime minister. These and other terms that are not mentioned (e.g., "Cabinet") are elements in what is often referred to as the "unwritten constitution."

Government is linked to the idea of governance. The word "governance" comes from the Greek word *kyberman*, which means to direct the course of a ship, or to steer the ship. The Romans borrowed the word as *gubernare* and it eventually crossed the English Channel as "governor", a steerman or pilot. In French the rudder of a ship is called a *gouvernail*.[2]

Given this provenance, it is understandable that metaphors about sailing are often used in describing particular issues, which can be "on course," or "about to go off course," and include references to "steering the Ship of State."

It is important to remember that governance can refer to a number of different notions:

- the art of governing,

- the exercise of authority,

- the structure of authority,

- the jurisdiction (i.e., the field in which the governing body has authority.)[3]

These concepts of authority, direction and control are intimately related.[4] In the case of Canadian broadcasting they deal with what various organizations are trying to do and must focus on setting goals, planning and developing policies to guide the system, monitoring performance and reporting to stakeholders (i.e., citizens, shareholders, trustees and others).

Once the government — through Parliament — agrees to a course of action (e.g., the objectives of the *Broadcasting Act*), it is the Executive (i.e., Cabinet, a particular minister and the relevant department) that is expected to engage in the activities required to meet the objectives spelled out in legislation. Indeed, "executive" is "derived from the Latin verb *esequi*, to follow through or carry out."[5]

In short, Parliament passes legislation, the Executive works to see that appropriate actions are taken, results are measured and the Executive reports back to Parliament. While this process is relatively easy to explain, the reality tends to be more complex. Situations change, resources are less than expected, new technologies present new demands, and costs are higher than estimated. Over time, the Executive has to respond to these changes and then report on a reality that may be completely different than that prevailing when the legislation was passed.

The Challenge of Governance

Governance, at the best of times, is difficult even when legislation is well framed, the focus is clear, and the Executive has the appropriate resources and is able to deliver a well-designed program. Much of the time things are more complicated. Indeed, the governance of the Canadian broadcasting system is possibly one of the most complicated instances of governance in Canada. There are a number of reasons for this:

- First, the governance of the system has evolved over the last 70 years with the creation of a number of independent boards and agencies.

- Second, there have been federal-provincial disputes over jurisdictions; Courts have awarded jurisdiction over radio, cable, and telecom to the federal government, whereas educational broadcasting and certain funding programs have been considered appropriately provincial jurisdiction.

- Third, from a desire to protect the broadcasting system from undue political interference, these boards and agencies operate at arm's length from the government.

- Fourth, the relatively simple broadcasting system that existed in the days of radio has evolved into an extremely complex system unlike anything conceived of in the 1920s or 1930s.

- Fifth, the broadcasting system is continually undergoing change, as new opportunities are made available due to innovations in technology.

- Sixth, many of the important and fundamental factors causing change are beyond government control (e.g., the development of satellites, the emergence of the Internet).[6]

Thus, while the 1991 *Broadcasting Act* may say that broadcasting is a "single system," this expectation is extremely difficult to realize. Indeed, there is nothing simple about the system and many of the important elements that drive the system are not within government control. As Professor Richard Schultz points out in his background paper:

> It is not only broadcasting markets that are fragmented by the existence of more radio and television stations and vastly more cable channels than ever before, but there are more private networks and near networks and more distribution systems than just off-air broadcasting and cable systems. It is, of course, not the mere numbers of alternatives in the broadcasting system that signals the demise of the single system. It is the intense competition both within sectors — public vs. private networks, private vs. private networks, cable vs. satellite systems, conventional vs. specialty cable services — means that the sense of common purpose, whatever the words of the legislation no longer exists, if it ever really did, except when incumbents united in opposition to the threat of new entrants such as the public and private television networks opposition to cable systems or all the elements opposition to direct-to-home satellite systems.[7]

Of course, there is the *Broadcasting Act* that the Executive is required to implement; however, the Executive's ability to "steer" the Canadian broadcasting system is extremely limited. There are at least four reasons for this:

- First, the Executive is directly responsible for very few of the elements of the system (e.g., the CRTC, the private sector).

- Second, the regulator has very clumsy instruments with which to "steer" the system.

- Third, many Canadian citizens have been opting out of the system. (e.g., by using black and grey market satellite dishes).

- Fourth, given the many programming choices Canadians now have, local and regional programming have become less economically viable (e.g., as several witnesses reminded the Committee, "must carry" is not the same as "must watch").

Further complexity is added to the system because responsibility is shared between at least two departments (Heritage and Industry), a broadcaster (the CBC), a regulatory agency (the CRTC), a funding agency (Telefilm Canada) and a producer (the National Film Board). In addition, two other agencies (the Copyright Board and the Competition Bureau) have important responsibilities — related to the enforcement of the *Copyright Act* and the *Competition Act*, respectively — that can impact on parts of the broadcasting system. At the same time, other legislation, including the *Canadian Radio-television and Telecommunications Act*, the *Radiocommunications Act* and the *Telecommunications Act* can have direct or indirect consequences on what happens in the Canadian broadcasting system. Finally, one of the most important funding sources, the Canadian Television Fund (CTF), is not an agent of the Crown, but a private-public partnership with its own board of directors that includes government representatives.

As Richard Schultz observed with respect to the CRTC, in his paper prepared for the Committee:

> … there should be little doubt that the dominant policy-maker in the broadcasting sector in Canada, as well as for telecommunications, is indeed the Commission. Although efforts to do so date back more than twenty-five years, successive governments have not been successful in asserting political or governmental control over policy-making. Even the inclusion in the 1991 revision to the *Broadcasting Act* of a power for the Cabinet to issue policy directions, long sought by the designated ministers for the CRTC, has not fundamentally changed the policy-making relationship.
>
> The problem is essentially two-fold. In the first place, in both 1968 and the 1991 versions of the *Broadcasting Act*, the Commission is given what is essentially a blank cheque and is thereby encouraged, indeed mandated, to be the de facto broadcasting policy-maker. Hortatory injunctions to "safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada … "can

> hardly be said to structure or direct the Commission's decision making. The same can be said of the 1991 addition of a reference to the "maintenance and enhancement of … cultural sovereignty".[8]

As Professor Schultz rightly notes, the CRTC is given an extremely broad mandate and, given the Commission's quasi-judicial status, the Executive of the government is extremely reluctant to be seen directing the Commission, except on very rare occasions.

While the desire to create agencies at arm's length from the day-to-day concerns of politics is understandable, the creation and evolution of such agencies in the absence of a coherent overall policy framework raises a serious issue of governance. That is, who is steering the ship? But this problem goes well beyond the fact that no one can directly be in charge. It also has to do with the reality that much of what is expected is undefined. Witnesses raised the issue of unclear definitions a number of times.[9] They also raised questions about how the various parts of the system relate to each other.

These three problems (arm's-length agencies, important terms that are undefined and unclear relationships among elements of the system) create a fourth problem. Since it is not clear what is to be accomplished, performance is difficult to measure, or in many cases cannot be measured. As a result, the various agencies and the overall system remain unaccountable.

C. Accountability

Accountability is fundamental to our understanding of parliamentary democracy. Without accountability, there can be no governance and without governance there can be no accountability. As a special committee of the House of Commons pointed out in 1985, three key elements of responsibility form a cornerstone of governance and accountability:

> Ministerial responsibility, along with the fusion of the executive and legislative branches, are distinguishing features of responsible government. The rules relating to these features are not set down in the Constitution. They are governed by convention, precedent and common sense.

> First, there is the responsibility of a minister to the Queen or the Governor General ... Second, there is the individual responsibility of a minister to the House. ... The third responsibility is that of the ministry collectively to the House...[10]

Although there is often dispute about who is responsible for what, the underlying notion is clear enough as long as we understand that someone (perhaps a minister) is reporting on a particular situation (e.g., the workings of a government program). The essence of accountability is often summarized in questions about who can request information, when, from whom and about what.[11]

Another important problem has to do with the absence of specified links between the various elements of the system. For example, while the CBC and the CRTC issue annual reports their reports do not explain how their actions over the past year (or years) have contributed to the goals established for the broadcasting system. The reports tend to focus on activities and outputs (e.g., this television series was presented in the case of the CBC or so many decisions were made in the case of the CRTC) without explaining how these "outputs" contributed to the goals of the broadcasting system.

This absence of specified links is coupled with the absence of a single focal point for governance. While the Executive is a focal point, it has never issued a report card on the broadcasting system and, as this report shows, will be unable to do so until a number of governance issues are sorted out. Furthermore, since there is no focal point for governance there is no overarching accountability framework. In the absence of an integrated policy, a single focal point for governance at the system level and accountability framework, it should not be surprising that there is an almost complete absence of reporting about the overall state of the broadcasting system. The absence of such a report, or a series of such reports, has made the work of the Committee much more difficult than it should have been.

This state of affairs, it must be emphasized, is a direct result of the fact that the governance of Canada's broadcasting was not a result of design but of evolution over the past 80 years. While there has been some recognition that there is a problem with governance of the system, little has been done about resolving governance issues.[12]

D. What the Committee Heard

Before proceeding, it is worth pausing to consider what witnesses told the Committee about the policy-making, regulatory and supervisory roles of government departments and the CRTC in the Canadian broadcasting system.

When Mr. Michael Wernick (then-Assistant Deputy Minister, Cultural Development, Department of Canadian Heritage) appeared before the Committee, he described the role of Canadian Heritage as follows:

> It's basically a policy oversight role and cultural policy focus, very much about connecting Canadians to each other, the expression of Canadian choices, Canadian content, Canadian diversity, and projecting Canada into the world. We always look at broadcasting issues, like any cultural industry issue or cultural sector issue, from the cultural lens. It's not to say that there aren't economic and industrial or international implications and lenses that can be applied, but our job, first and foremost, is to focus on the cultural policy goals ...[13]

Mr. Wernick also explained that the Department advises the Minister "on policies from time to time" and in recent years has designed programs to support the production sector by "building ... public policy tools and instruments that support presentation and access to Canadian programming."[14]

As for the CRTC, Mr. David Colville (then-Acting Chairman,[15] Canadian Radio-television and Telecommunications Commission) described his agency's role as follows:

> The flexibility provided in the *Broadcasting Act* has allowed the [C]ommission to amend its policies and regulations to reflect the changing landscape. ... The [C]ommission has recently enunciated the strategic objectives that will guide its policy development and decision-making in broadcasting. At the core of the objectives is the continuing theme of choice and diversity for Canadians while maintaining a strong Canadian presence. The objectives call for the delivery of a broad range of services in both analog and digital and the promotion of services that reflect Canadian values.[16]

Taking this point a step further, Ms. Andrée P. Wylie, Vice-Chair, Broadcasting, Canadian Radio-television and Telecommunications Commission, noted:

> During the past few years, the CRTC has used the flexibility in the [A]ct to undertake comprehensive reviews of all of its major policies and regulations covering distribution, radio and television. New policies covering areas from ethnic broadcasting to digital specialty services have also recently been introduced to reflect the changing demographics in Canadian society and technological change. The results are now taking hold and have produced positive effects.[17]

The above testimony suggests that Canadian Heritage considers itself to be a program manager and cultural policy oversight agent, whereas the CRTC sees itself as having the authority — through the flexibility it has found in the Act — to develop new broadcast policies, regulate broadcasters and enforce and promote Canada's cultural policy principles. That said, when Mr. Michael Helm, Director General, Telecommunications Policy Branch, Industry Canada, situated Industry Canada in the Canadian broadcasting system, his separation of Heritage and CRTC responsibilities was more precise. He said:

> In terms of policies, Industry Canada has the responsibility in telecommunications and radio communications and … Canadian Heritage has the policy responsibility in broadcasting. For regulation, of course, the CRTC regulates in both telecom and broadcasting and Industry Canada in radiocommunications. That's largely technical regulation to ensure the airwaves operate properly, without interference and so on; that's our area of regulation.[18]

Seen from this perspective, it is clear that the lines between Canadian Heritage and the CRTC have been left open to interpretation. This leaves us with two government departments, Canadian Heritage and Industry Canada — whose respective roles are loosely divided along cultural policy and industrial policy lines — and the CRTC, which has decided that the Act grants it the freedom to make policy, as required, as it oversees the public trust objectives found in the Act.[19]

At the same time, it is equally apparent that there are gaps in the structure, governance and oversight of our system. Indeed, under normal circumstances changes in policy are made through Parliament on the basis of proposals made by a lead department. In Canadian broadcasting, however, this situation seems to have evolved to such a point that the lead department — Canadian Heritage — has very little policy-making authority. Indeed, virtually all of the authority for broadcasting policy has been given to the regulator. For this reason, despite the many success stories of Canada's broadcasting system that have been highlighted throughout this report, it is clear that the governance and accountability of the Canadian broadcasting system needs to be fundamentally rethought.

E. Future Directions

Two of the most important steps taken to deal with governance issues and evolving technologies occurred in the late 1960s and early 1970s. In the late 1960s, the Government of Canada identified some of the likely impacts of the digital revolution and created a single department and regulator (the Department of Communications and the CRTC) in 1968. Having one department enabled those responsible for cultural, industrial and communications issues to work together to find common solutions for most of the important issues facing the broadcasting system. This arrangement worked quite well. Indeed, the Caplan-Sauvageau Task Force was carried out under the aegis of the Department of Communications and the 1991 revisions to the *Broadcasting Act* largely flowed from its work and support from the department's officials.

The Department of Communications was dismantled in 1993 as part of a reorganization of government. Unfortunately, the 1993 reorganization further divided the already fragmented governance of the Canadian broadcasting system. Thus, a crucial element in being able to deal with the forces unleashed by the digital transition (described in Chapter 12) is to recreate a department responsible for cultural industries, telecommunications and broadcasting. This is particularly important since the changes disrupting the broadcasting system today are also causing major upheaval in other parts of the cultural portfolio (e.g., book distribution, which this committee studied in 2000). Indeed, the Committee raised the importance of looking at the entire system in 1999 when it suggested in *A Sense of Place, A Sense of Being* that government needs to be able to deal with the full continuum from creation, to production and distribution, to marketing and audiences for all of the cultural endeavours in which Canadians engage.[20]

The creation of one department, which was proposed by a number of witnesses, would have the added benefit that the Executive could then seriously address governance issues that are related to the broadcasting system as a whole. At present the Executive is seriously hampered in its ability to deal with governance issues. Accordingly,

RECOMMENDATION 19.1:

The Committee recommends the creation of a department of communications, responsible for the Government of Canada's support for broadcasting, telecommunications and cultural industries.

Several witnesses also raised the importance of having one Act to deal with communications, broadcasting and the regulation of these activities. Canada was one of the first countries in the world to recognize the value of a single agency to regulate both broadcasting and telecommunications, but these sectors are still governed by separate pieces of legislation. New developments in technological convergence may require new regulatory arrangements, as current regulatory regimes and statutes are quickly becoming outmoded. Thus, one of the first activities of the new department should be to investigate the benefits to be gained from having one piece of legislation that covers communications, telecommunications, broadcasting and their regulation. Indeed, the Committee is of the view that there could be great benefits from having a comprehensive piece of legislation that deals with these areas. Therefore:

RECOMMENDATION 19.2:

The Committee recommends that the government consider whether a comprehensive communications Act is required to integrate the existing *Broadcasting Act, Telecommunications Act and Canadian Radio-television and Telecommunications Act* into one piece of legislation.

F. Policies, Definitions and Objectives

As noted earlier, a problem the Committee faced throughout its study was the extreme generality of the policy objectives set out in the *Broadcasting Act*. There is nothing wrong with general objectives as long as they are translated into more specific objectives, or sub-objectives, at some point in the system.[21]

A second problem was the absence of concrete definitions. For example, section 5(2) of the *Broadcasting Act* says the CRTC is expected to regulate the Canadian broadcasting system so that it takes into account "regional needs." Since the term "regional needs" is not defined in the Act, in policy documents produced by responsible departments or by the CRTC, it is not clear how one is to decide if these needs are being met.[22]

A third problem was the number and complexity of the objectives set out in the *Broadcasting Act*. While it is understandable why they are so numerous (for example, the 1991 revisions were designed to close gaps and cover all players in the system by adding community, educational and Aboriginal broadcasting), the reality remains that we have a broadcasting system with some 20 objectives, not one of which is described as being more important than the others. As Professor Schultz pointed out in his paper prepared for the Committee:

> While there are admittedly other more concrete policy objectives in s. 3 of the Broadcasting Act, they serve primarily to compound the problems as there is no ranking, no attempt to resolve inconsistencies, or ambiguities, or outright conflicts. In fact the doubling of the original ten policy to twenty objectives not only did nothing to clarify the policy morass or provide effective policy direction to the Commission, they reinforced the policy autonomy of the Commission.[23]

Given this elasticity of mandate, it is little wonder that there has always been considerable dispute over how well the various trustees of the Canadian broadcasting system have fulfilled their responsibilities to the public interest.

Senator Jean-Robert Gauthier raised this point when he appeared before the Committee to discuss the CRTC's denial of an application made by TFO (Ontario's French-language educational broadcaster) to have its services carried on cable in Quebec. As Senator Gauthier explained:

> It would also be appropriate for this committee to clarify the concept of public interest. … I tried to ask the CRTC what they meant by "public interest". I was told that they did not have a definition. I pointed out to them that they had used that point as their final argument in the TFO case. They said that it was not in the public interest to approve this TFO application … I told them that I didn't understand … So I told them that it was up to them to define public interest since … the chief, the big boss as we say, the CRTC, had used that as an argument. I asked them to define what they meant for me. I understand what is meant by "national interest", but I do not understand what is meant by "public interest".[24]

In short, it seems that certain objectives for Canadian broadcasting have been deliberately left open for interpretation, whereas others simply do not lend themselves to precise definition. The Committee believes that it makes little sense that our broadcasting system is regulated and supervised on the basis of core principles that lack definition. It recognizes, however, that there is a fine line that must be struck between loose definitions that provide needed flexibility and strict definitions and criteria that lead to excessive micromanagement. Accordingly, the Committee is of the view that one of the first and most important tasks of the new department of communications, or alternately the existing Department of Canadian Heritage, should be to develop and promulgate a new broadcasting policy statement that is sufficiently precise that interested citizens and trustees can understand what is expected of the system.

RECOMMENDATION 19.3:

The Committee recommends that the responsible department develop a detailed and comprehensive policy statement for Canada's broadcasting system. This policy statement should expand on section 3 of the *Broadcasting Act* and include appropriate definitions of key terms.

What is the Public Interest?

There have been lengthy debates and books written about various definitions of the terms "the public interest" and "the public good" since people began thinking about politics. Plato, in *The Republic*, gave one answer, Machiavelli, in *The Prince*, took a decidedly different approach, as did the political philosophers of the 18th century who

had a profound influence on the development of more modern notions of democracy.

In the 20th century the debate continued, as it will for this century and the next one. The idea of the "public interest" or "the public good" seem intuitively clear especially when one uses an example related to a topic like safety. Almost no one disputes the idea that there is a "public interest" in having rules to govern driving automobiles on streets and highways. Similarly, no one seriously argues that "the public good" is not enhanced by the existence of laws governing automobile traffic. Similar considerations apply to the management of the radio frequency spectrum (RFS), which has an analogous set of rules to facilitate its use. No one seriously suggests that a private individual should be free to broadcast a radio signal on the frequencies reserved for airline navigation.

In broadcasting, a wide array of definitions of the public interest have been used, ranging from this classic 1960 statement from CBS executive Frank Stanton: "A program in which a large part of the audience is interested is by that very fact ... in the public interest," to this rather more elaborate example from Australian regulator Gareth Grainger: "The public interest is that interest which governments, parliaments and administrators in democratically governed nations at least must accept and reflect in laws, policies, decisions and actions in ensuring peace, order, stability, security of person, property, environment and human rights for the overall welfare of the society and nation who, through constitution and election, allow the individual citizen to renew and reflect their agreement and consent to be governed and administered."[25] Grainger then goes on: "After eighty years of broadcasting, the original public interest issues which were seen to be implicit in the use of the broadcasting spectrum remain largely unchanged though our way of expressing them may require some restatement."[26]

G. The Mandate of Key Agencies

Another area where there is a pressing need for more precise objectives is in the mandate and responsibilities of the agencies involved in the broadcasting system (e.g., CBC, Telefilm, the NFB, the CTF and the CRTC). For example, the mandate of the CRTC could be spelled out with much more precision than at present; the CRTC could be required to report on specific aspects of its contribution to the "system" in more specific terms than it does at present. Similarly (and as noted in Chapter 5), the overlapping roles of the CTF and Telefilm need clarification. If mandates were clarified, then the roles of the boards of the agencies would be more specific. Another benefit would be a reduction in the administrative burden faced by broadcasters and independent producers.

Similar points can be made about the CBC. Its mandate is very general; it is not clear how the Corporation's mandate relates to the objectives set out in the *Broadcasting Act* and citizens are hard pressed to know whether the CBC is contributing to expected objectives. A related problem is that some witnesses expect the CBC to do a great many things when it — quite clearly — does not have the resources to do everything that everyone expects. Moreover, there are many broadcasters — some not-for-profit and some for-profit (e.g., APTN, Vision, or Bravo) — that provide programming that meets traditional expectations of a public broadcaster. If other broadcasters provide suitable programming that educates, informs and entertains, why should the CBC be expected to produce similar material without regard to what else is being done within the system?

For these reasons, the Committee is of the view that the mandates of the key agencies in the Canadian broadcasting system need to be clarified. Therefore, in light of the recommendations made in chapters 5 and 6:

RECOMMENDATION 19.4:

The Committee recommends that the mandates of the CBC, Telefilm, NFB and the CTF be more precisely related to the goals of the broadcasting system. In developing these requirements government officials should work with all interested parties, and pay special attention to ensuring a consistent approach to reporting results.

H. The Mandate of the Regulator

A theme that emerged during the Committee's study was that the CRTC needs to use the tools at its disposal more effectively. It should be an agent rather than an actor (i.e., an executor rather than a maker of public policy). Indeed, some of its functions remain absolutely critical to the ongoing development of the system. For example, the public hearing process that the Commission employs offers some transparency and, as such, helps provide people and institutions some insight into how the policy principles of the Act are upheld.

That being said, few witnesses voiced praise for the CRTC. In fact, one of the very few exceptions to this was Mr. Gary Farmer, President, Aboriginal Voices Radio Inc., who noted:

> I'm thankful [for] the CRTC. They've been our biggest supporter. I know there are a lot of things said about them, but as far as native broadcasting goes, they have really brought us to the table here. It is only because of them that we are actually here today to speak before you, through their contributions ... I want to acknowledge the CRTC.[27]

Similarly, Mr. Jacques Bensimon, Government Film Commissioner and Chairperson, National Film Board, congratulated the CRTC for its support for Aboriginal programming, namely the Aboriginal People's Television Network, during his appearance before the Committee, when he observed: "Thanks to the CRTC, we do have APTN on basic cable."[28]

However, apart from lukewarm words of support for the CRTC from witnesses representing the independent television production sector and some unions and artists associations, most comments concerning the Commission ran the full gamut of frustrations, with too many complaints and examples to count concerning inconsistent policy positions, weak enforcement,[29] heavy-handed decision making, inefficient practices, and stringent expectations. Thus, in much the same way the Davey Committee in 1970 labelled "sniping at the CBC ... a national pastime,"[30] it seems that our system's regulator has become the easiest target to blame for many of the problems facing Canadian broadcasting.

By way of illustration, several witnesses noted that local programming was severely hurt when the Commission lifted its long-standing requirement that each television facility produce a fixed number of hours of local non-news programming each week. As Mr. Arthur Simmonds, National Representative, Communications, Energy and Paperworkers Union of Canada, told the Committee:

> Within a few years of that decision, most television stations had eliminated local production other than news and, as a result, were

> able to get rid of production workers not required for news programs.[11]

Another witness, Professor Bruce Wark, Associate Professor of Journalism, University of King's College, echoed this perspective and shed further light on the plight of local radio programming. He explained that:

> In deregulating privately owned radio stations, the CRTC dropped most of its news and community service requirements. Private radio's obligation was limited to playing Canadian music. Stations here responded by eliminating news reporting and current affairs programming, and this left CBC Radio to do the more expensive news and current affairs programming at taxpayers' expense. At the same time, CBC Radio budgets were slashed, and as a result CBC Radio spends much of its time broadcasting the happenings in and around Halifax and Sydney to the rest of the province.[12]

Another area of concern for some witnesses was a CRTC decision made in the late 1990s to remove expenditure rules for prime-time programming. According to Mr. Mark Laing, Chairperson, Directors Guild of Canada this statement:

> … has had the consequence of having broadcasters funnelling more time into cheaper, cheaper, and cheaper shows, more reality-based shows and fewer difficult shows, Canadian dramas, things that are culturally much more important to us… That was a mistake…[13]

Along a similar vein, Ms. Maureen Parker, Executive Director, Writers Guild of Canada, noted that:

> As dozens of new specialty channels have been introduced and as audiences have fragmented, broadcasters are increasingly resorting to low-budget, magazine-style documentary series for content. A number of factors have contributed to this decline in our dramas and POV documentaries. One important factor was the CRTC's 1999 television policy. While the CRTC's new policy set a prime-time quota of Canadian priority programming of eight hours a week, it expanded its definition of priority programming to include much cheaper genres of programming, such as regional programs and entertainment magazine shows.[14]

Mr. Armand Dubois, TVA Network Journalist in Montréal, Provincial Council for the Communications Sector, Canadian Union of Public

Employees, argued that recent CRTC decisions on the ownership and operation of community broadcasters had hurt community programming. He noted that:

> The law recognizes that our broadcasting system is made up of public, private and community components. [The CRTC's] latest decisions have certainly not helped solidify the community component or ensure its ability to survive. The CRTC has proven to be incapable of reinforcing cultural diversity, which is one of Canada's essential constituent values. … [D]iversity of content, forms and ideas can really be articulated in a creative way … in the community sector. Yet what do we see happening currently? Community TV everywhere is on its deathbed, if it is not already dead.[55]

For other witnesses, concerns such as those listed above are merely a sign of the changing times. As Ms. Susan Peacock, Vice-President, Canadian Motion Pictures Distributors Association, explained:

> Current broadcasting policy, insofar as it applies to the more conventional or traditional technologies, was based on spectrum scarcity and the high cost of producing and distributing content with mass appeal. … Whatever the basis for … broadcast regulations, many of the concerns that gave rise to them are no longer true.[56]

For example:

> Some … concerns will be alleviated … [by] new technologies [that] will provide unlimited shelf space, dramatically lower the cost of delivery, dramatically reduce the cost of producing attractive and imaginative content, and therefore make it commercially feasible to produce and deliver content of extremely narrow interest, either geographically or accordingly to subject matter. This could result in much more variety than today's broadcasting system with its reliance on mass audience for scheduled viewing appointments.[57]

Taking this perspective a step further, Ms. Sheridan Scott, Chief Regulatory Officer, Bell Canada, noted that:

> In today's context of accelerated, ongoing change in the communications industry, procedural or structural reform of the CRTC should be considered. It should be carried out so that the CRTC is structured in a manner that encourages the development

> and application of a coherent national broadcasting policy, allowing it to operate in a more effective and efficient manner.[58]

With this in mind, BCE recommended that the CRTC's mandate be clarified:

> … with respect to competition issues, either by cabinet direction or legislative amendment; and finally, harmonize the powers and procedures available to the commission for broadcasting and telecommunications matters.[59]

Proposed Solutions

Setting aside the CRTC's support for Aboriginal broadcasters — something for which the Commission should be strongly commended — it can be seen that most witnesses were to varying degrees frustrated with the CRTC and its practices. In fact, four of the most frequently mentioned problems were triggered by recent CRTC policy decisions. First, the Commission seems to have created a great deal of confusion in the area of community broadcasting. Second, it seems to have arbitrarily changed definitions of priority programming in such a way that local news and prime-time drama have been reduced in importance. Third, recent decisions on cross-media ownership transactions have endorsed corporate concentration. Fourth, the CRTC seems to have lost sight of its cultural objectives.

It is equally apparent from the above testimony — and from some of the issues raised during Committee site visits — that the Commission is imposing an unreasonable regulatory burden (or "administrative burden" to use the words of section 5 of the *Broadcasting Act*) on some of the system's stakeholders. The four types of burdens that were most frequently mentioned included:

- The size and costs of the CRTC;
- The licence renewal process;
- Compliance with conditions of licence that disregard local or regional circumstances; and
- Micromanagement.

The Role of the Regulator

As noted above, section 5 of the *Broadcasting Act* states that the system is to be "regulated and supervised in a flexible manner that … is sensitive to the administrative burden that … may be imposed on persons carrying on broadcast undertakings." **In light of the evidence, it is the Committee's view that the time has come to overhaul the CRTC and provide it with a new mandate focused on its cultural objectives.** It should not be given such a broad mandate that it is the system's *de facto* policy maker. Nor should it micromanage the business of the system's trustees. In short, it should focus exclusively on supervision and regulation through a cultural lens. That said, for this to have any chance of success, the objectives of the Canadian broadcasting system need to be spelled out with clarity and there needs to be a system of accountability that makes sense of the notions of trusteeship and system oversight. Thus:

RECOMMENDATION 19.5:

The Committee recommends that the Government of Canada review the CRTC's mandate with a view to refocusing its role on cultural objectives, clarifying its role and establishing clear limits on its power to supervise, regulate, create and manage programs. This review should include consideration of how the CRTC is to relate to other agencies and organizations within the broadcasting system.

Furthermore, given the various issues involved in governance and accountability, the Committee is concerned that there is no formal link between the policy development process within government and the development of regulations by the CRTC. This is perhaps one of the most obscure and least transparent processes in the governance of the Canadian broadcasting system. Accordingly:

RECOMMENDATION 19.6:

The Committee recommends that the Government of Canada should require as part of a redefined CRTC mandate that CRTC regulations be reviewed by the appropriate department and approved by the Governor in Council.

Indeed this practice is consistent with that of other regulators. In the Committee's view this would highlight the paramount importance of parliamentary oversight.

Role of the Competition Bureau

The Competition Bureau is an independent law enforcement agency that ensures all Canadians enjoy the benefits of a competitive economy, low prices, product choice and quality service. The Commissioner of Competition oversees the application of the *Competition Act*, as well as several other pieces of federal legislation that deal with business practices in Canada. According to the Bureau's Web site:

> The basic operating assumption of the Competition Bureau is that competition is good for both business and consumers.
>
> Fair competition makes the economy work more efficiently; strengthens businesses' ability to adapt and compete in global markets; gives small and medium businesses an equitable chance to compete and participate in the economy; provides consumers with competitive prices, product choices and the information they need to make informed purchasing decisions; and balances the interests of consumers and producers, wholesalers and retailers, dominant players and minor players, the public interest and the private interest.[40]

In his testimony before the Committee, Mr. Konrad von Finckenstein, Commissioner of Competition, Competition Bureau, observed:

> The CRTC should not review broadcasting transactions from the perspective of commercial viability. The CRTC's review should be focused solely on the impact the proposed merger would have on the attainment of the core cultural objective — namely, the production and distribution of Canadian content. According to us, its logical corollary is the maintenance of diversity of voices.[41]

The Committee agrees with this observation. Indeed, it notes that a concern raised by witnesses was that the CRTC and the Competition Bureau are often at odds when media mergers, acquisitions or take-overs are proposed. A recent example was Astral's desire to purchase radio stations, which was accepted by the CRTC but questioned by the

Competition Bureau; subsequently, Astral decided not to proceed with the acquisition. Accordingly:

RECOMMENDATION 19.7:

The Committee recommends that the Government of Canada should as part of its review of the mandate of the CRTC clarify the respective roles and responsibilities of the CRTC and the Competition Bureau with respect to broadcasting.

The Committee is well aware that it is outside its jurisdiction to comment on the roles and responsibilities of the Competition Bureau. Nevertheless, it is of the view that both agencies (the CRTC and the Competition Bureau) must have sufficient resources to carry out their respective responsibilities within the Government of Canada. For this reason:

RECOMMENDATION 19.8:

The Committee suggests that the Standing Committee on Industry carry out a review of the role and resource requirements of the Competition Bureau as it relates to competition within Canada's broadcasting system.

Regulating the National Public Broadcaster

While the Committee is aware of the longstanding debate about how the CBC should be regulated, it is of the view that the regulator should not be charged with determining the roles and responsibilities of the national broadcaster. Moreover, given that the CBC is accountable to Parliament, it believes that it makes little sense that the CRTC has the same supervisory authority over the CBC that it has over other broadcasters.

A number of witnesses questioned the CRTC's attempts to micromanage the CBC. That there is a serious problem of micromanagement can be illustrated by looking at a recent decision made by the Commission concerning CBC English television. As already noted, the 1958 revisions to the *Broadcasting Act* specifically separated the management of the CBC from the system's regulator; in other words, the CRTC is not the national public broadcaster and is not charged with its management. Notwithstanding this separation (which was maintained with the 1968 and 1991 Acts), the CRTC's 6 January 2000 renewal for CBC English-language television (Decision CRTC 2000-1) commented:

> The Commission **strongly encourages** the CBC to plan for more production resources and greater authority to regional management… (Paragraph 17)[42]
>
> … The Commission therefore imposes a condition of licence requiring the CBC to broadcast on its English-language television network during peak viewing periods, in each year of the licence term, certain minimum hours of priority programming for which the principal photography occurs more than 150 kilometres away from Toronto. (Paragraph 24)
>
> … The Commission therefore expects … a decrease in 120 hours per year in professional sports programming, by the end of the end of the licence term; an increase of 60 hours per year in amateur sports programming, starting in the first year of the new licence term; and to review all professional sports contracts as they come up for renewal. (Paragraph 51)

The most interesting aspect of these comments and conditions of licence is that they are all responsibilities that should be assumed by the Board and management of the CBC. Indeed, it makes very little sense that Canada's broadcast regulator is micromanaging the nation's public broadcaster by telling it where principal photography should occur, what the budget allocations and responsibilities of regional managers should be, or how much and what type of sports programming should be aired.[43]

The Committee is concerned that there is excessive uncertainty about the division of the roles and responsibilities between the Board of the CBC and the CRTC. The Committee is aware that this problem is long-standing, with no easy solution. There are, however, two possible approaches that the Committee has considered.

- Remove the CBC from the regulatory authority of the CRTC.

- Define a new relationship between the CBC and the CRTC.

While removing the CBC from the regulatory authority would have its advantages, it would likely reduce the Corporation's arm's-length relationship with government, since it would then be accountable only to Parliament. The Committee recognizes, as well, that removing the CBC from the direct regulatory supervision of the CRTC raises some key questions. For example, who would handle the CBC's requests for licences, and by what process? If the CBC reports only to Parliament, would a standing committee have the resources to determine how well the CBC is meeting its mandate?

At the same time, much of this report has focused on the need to clarify mandates, roles and responsibilities and reporting relationships. If the Committee's recommendations on these issues were implemented, then the Committee's concerns about the current circumstances would be substantially reduced. That being said, two main concerns would still remain: the CRTC's power to attach conditions of licence and its micromanagement of CBC programming decisions.

For these reasons, the Committee has concluded that the CRTC's power to attach conditions of licence to the CBC should be eliminated. **Given that the *Broadcasting Act* provides the CBC's mandate, and that the majority of its funds are approved by Parliament, the Committee believes that it makes little sense for the CRTC to oversee the decision making of the CBC's President and Board of Directors.** Accordingly:

RECOMMENDATION 19.9:

The Committee recommends that the CRTC's regulatory supervision of the CBC be limited to the approval of new licence applications.

With this latter point in mind, Figure 19.1 shows CBC licence applications for new television services that were denied by the CRTC in recent years. Given that all of these proposed services suit the mandate of a public broadcaster, the Committee cannot understand why the Corporation was denied these services by the CRTC. Indeed, cable and satellite subscription fees would have supported all of these services; as such, the Corporation would not have required any increase in its parliamentary appropriation.

Figure 19.1 CBC licence applications for new television services that were denied by the CRTC

Year	Proposed service	CRTC Decision
1989	*Réseau de l'information* (RDI)	Denied, 25 August 1989, CRTC Decision 89-599
1993	*Headline* with Baton	Denied, 6 June 1994, CRTC Decision 94-287
1993	*Festival*, arts channel with NFB and others	Denied, 6 June 1994, CRTC Decision 94-287
1996	*Southam Headline News* with Southam	Denied, 4 September 1996, CRTC Decision 96-618
1999	*Réseau de l'histoire*	Denied, 21 May 1999, CRTC Decision 99-113
1999	*Réseau de l'économie*	Denied, 21 May 1999, CRTC Decision 99-113
1999	*Réseau des arts*	Denied, 21 May 1999, CRTC Decision 99-113
1999	*Télé classique* (with TVA)	Denied, 21 May 1999, CRTC Decision 99-113

Note: Upon reapplication, RDI was approved on 6 June 1994 (CRTC Dec. 94-285); Upon reapplication an arts channel, ARTV (with partners) received approval on 14 September 2000 (CRTC Dec. 2000-386).

Given these considerations:

RECOMMENDATION 19.10:

The Committee recommends that the federal government invite the CBC to come forward with a plan outlining its needs for additional radio and television licences for consideration by Parliament and the CRTC.

The Need for a Strong Regulator

The above discussion has also exposed an urgent need to decide whether the present-day functioning of the regulator is a warning sign that the public policy objectives for Canadian broadcasting will become unenforceable due to ongoing changes taking place in broadcasting worldwide. Otherwise, the same legislation that has facilitated the development of a Canadian-made alternative through which our cultural norms, values and ideals are communicated will continue to unravel, thereby undermining any pursuit or fulfilment of cultural objectives through the broadcasting system. Accordingly, **the Committee reaffirms the need for a strong, independent regulatory agency to oversee the carrying out of Canada's broadcasting policy and to supervise the Canadian broadcasting system**.

In the Committee's view the regulator needs to have more power. Part of the problem is that the Commission's power to revoke licences is too drastic to be useful and the fines that it can impose — which range from $25,000 for an individual to $500,000 for a corporation per offence — are too small to make an impression on large conglomerates or multinational corporations. As one witness pointed out, the current situation leaves the CRTC in the uncomfortable situation of either revoking a licence or giving non-compliant broadcasters a modest fine.[44]

A more subtle form of compliance used by the regulator is to have offending broadcasters subjected to additional hearings. The costs to smaller companies of preparing for hearings can be substantial. For large conglomerates these costs are little more than a drop in the bucket. **In the Committee's view, the Commission needs more effective tools.** It therefore suggests that the CRTC have a ladder of penalties at its disposal with the top of the ladder being a fine of $2 million per offence for corporations and $50,000 for individuals.[45]

RECOMMENDATION 19.11:

The CRTC should have the power to impose a wider range of sanctions and more costly fines on those who fail to comply with regulations and in turn be directed to enforce these breaches of regulation.

Furthermore:

RECOMMENDATION 19.12:

Once the mandate review of the CRTC has been completed, the Committee recommends that the Government of Canada ensure that the CRTC has the necessary resources and flexibility to carry out its redefined and clarified responsibilities.

This flexibility should include the ability to establish appropriate salary levels for senior staff of the Commission.

I. Reporting and Measurement

> **Broadcasting ... is a powerful means of communication addressing itself to all Canadians every day of the year ... the responsible agents of Canada's national broadcasting policy owe it in the future to the Canadian public to keep it constantly informed of the objectives to be reached in accordance with policy laid down by Parliament and of the road which is being following to arrive at that end.**
>
> ***Royal Commission on Broadcasting, 1957***

Reporting

While it would be beneficial to clarify objectives and define core terms, a significant problem would still remain: Canada has never had an organization or body mandated to regularly evaluate and assess how well its trustees have been meeting the public policy objectives of the *Broadcasting Act*. In fact, neither Canadian Heritage, nor the CRTC has issued a report card or evaluation of the broadcasting system since the passage of the 1991 Act.[46]

Given the high expectations expressed in the Act, this latter point comes as a surprise. After all, if a summary report or evaluation were carried out and reported to Parliament on a regular basis, it would quickly become a valuable tool for our broadcasting system's policy-makers, legislators and trustees.[47]

Thus, just as there is a need to define terms that are used in discussions of the broadcasting system it is equally important to agree on what should be reported, by whom and when. In simple terms, there must be a set of coherent rules that govern reporting. Within that agreement there is also a need to decide what should be measured and how it should be measured.

During the course of the Committee's work, members asked many different questions to which witnesses were often unable to provide any answers. In part, this may be because witnesses themselves are not neutral, but vibrant participants in the system. A larger reason, however, is that the information required to answer the question is not collected. This would be understandable if the government's involvement in the broadcasting system was a recent phenomenon, but this is not the case. In short, there is little or no reporting on many topics of relevance to the functioning of the Canadian broadcasting system.

Reporting is the crucial element of accountability. As a Canadian textbook on accountability points out:

> The term "reporting" connotes much more than the physical act of making a report. It involves the conceptual framework underlying reports: the determination of the audience and that audience's needs; the decisions of what should be reported, how, and how frequently: and consideration of what must be done to obtain the information reports will contain. Reporting on performance can and should be distinguished from measuring it. … Performance entails accomplishments as related to efforts or capabilities and intent.[48]

One might hope that the situation would be better when talking about the work of the individual organizations in the system (e.g., the CBC, the CRTC and the CTF), but it is not. The annual reports of these groups tend to focus on activities, rather than governance or accountability. Thus, while there is some measure of outputs there is little serious measurement or reporting of outcomes. This is coupled with inconsistent and inadequate reporting on performance that is often characterized by a relative lack of necessary information, little or no focus and an absence of quality. Indeed, **the Committee notes that annual reports seem designed to cast organizations in the best possible light but provide little information on how well they are meeting their mandates or contributing to the overall goals of the broadcasting system**.

The absence of such information prompted many of the questions posed by members of the Committee to witnesses during Committee hearings. For example, when asked if the CTF measured the impact of the programs it supports Mr. Richard Stursberg (then Chair of the Fund) said:

> We don't involve ourselves in those kinds of decisions or measures. Essentially, the broadcaster triggers the fund … So we don't involve ourselves in judgments about the content of these products; that we leave to the broadcasters.[49]

In summary, one can say that the Canadian broadcasting system has evolved in such a way that there is no agreement for reporting on performance. This means the Executive cannot expect coherent reports without re-examining the very structure and mandate of the agencies that make up the system. As the Honourable Flora MacDonald commented, in the late 1980s:

> While conceding regulatory agencies including the CRTC require considerable independence, reluctantly it is the government which must bear the responsibility for the actions of the CRTC. The CRTC's independence cannot be so great that it is accountable to no one.[50]

Measurement

Whatever approach is taken to improve reporting, the question of measuring outcomes remains. One characteristic of the evolution of Canada's broadcasting system as a cultural system is an extreme vagueness in the terms used. A second characteristic is the very loose link between goals and the agencies that are to support the goals. A third characteristic is an almost complete absence of a common set of measurement processes and the requisite tools to determine how well we are doing.

Between the 1930s and the 1980s, measuring how well the system was doing was not that difficult and citizens were probably content to see that there was a Canadian presence. Indeed, even as late as the Caplan-Sauvageau Task Force of the mid-1980s, it was relatively easy to measure what was being done. But the authors of the Caplan-Sauveageau could not possibly have imagined the impact of changes in technology and the way the Canadian broadcasting system would respond to the fragmentation of audiences.

For example, no one has ever measured the number of programs that might reasonably be thought of as "educational and informative" or tracked the channels that offer such programming. Furthermore, witnesses who appeared before the Committee tended to assume that prime time (7:00 — 11:00 p.m.) is the only part of the viewing day of importance, and that viewing to a particular channel tells us about the value of what is offered.

In effect, most of the measures currently in place report on a set of administrative and commercial categories developed many years before the 1991 revisions to the Act. As noted in chapter 4, these categories are not those that artists would use, nor are they categories that a committee interested in cultural affairs might find useful. As it stands, existing audience share measures are categories designed to gauge audience viewing habits for the purposes of advertisers.

In other words, even though Canadian taxpayers contribute more than a billion dollars to the broadcasting system every year, there is no way to determine how well the system is doing in meeting the objectives set for it in legislation. Furthermore, since no one is responsible for data collection or reporting, this information is not available for those who should be steering the system.

Proposed Solutions

In the mid-1970s the Government of Canada started to refine the reporting system designed to measure the effectiveness and efficiency of government programs. Two important initiatives were the creation of the Office of the Comptroller General, followed by the Treasury Board's Guide on Program Evaluation.

In 1981, the government committed itself to provide Parliament with expanded information in its Part III Estimates. Despite modest improvements to the system (program evaluation results were added to Part III Estimates in 1983) the Auditor General reported in 1992 that departmental reporting did not provide the "breadth of information needed."[11]

Over the past 10 years the Treasury Board Secretariat, the Auditor General and the Canadian Comprehensive Audit Foundation (CCAF) have undertaken considerable work to improve performance reporting. The Auditor General has identified the following five performance criteria for reporting:

- Organizational context and strategic outcomes are clear.
- Performance expectations are clear and concrete.
- Key results are reported against expectations.
- Reliability of performance information is supported.
- Use of performance information is demonstrated.

Meanwhile, the Treasury Board Secretariat has identified the following principles for performance reports:

- Provide a coherent and balanced picture of performance that is brief and to the point;
- Focus on outcomes, not outputs;
- Associate performance with earlier commitments and explain any changes;
- Set performance in context;
- Link resources to outcomes; and,
- Explain why the public can have confidence in the methodology and data used to substantiate performance.

The Auditor General notes that the Treasury Board's six principles are consistent with its own performance criteria. That said, very little information that meets these principles and criteria is produced by the federally funded organizations involved in the broadcasting system. Indeed, **the Committee cannot help but conclude that the CBC, Telefilm, the National Film Board, the CRTC, the responsible departments (Industry and Heritage) and the CTF do not produce reports that meet the criteria and principles of the Auditor General or the Treasury Board**. Therefore:

RECOMMENDATION 19.13:

The Committee recommends that a renewed broadcasting policy include clear, measurable goals and objectives as well as a process for evaluation and accountability.

While the overall system for performance measurement and reporting on performance can best be described as inadequate, the Committee would like to commend the Canadian Film and Video Production Television Agency (CFTPA) for its 2003 *Industry Profile*, which represents a substantial contribution to the presentation of useful information about the production of film and video. The Committee also recognizes the work the CRTC has carried out in the first three Broadcasting Monitoring Reports that it has prepared. While eager to recognize these important initiatives the Committee remains convinced that there is still a great need for improvement. Accordingly:

RECOMMENDATION 19.14

The Committee recommends that performance reporting requirements that match those of the Government of Canada's Treasury Board and are related to the goals of the broadcasting system be added to the mandates of the CBC, Telefilm, the National Film Board and the portion of the CTF that is supported by public funds.

Accurate and Timely Information

One concern expressed by members of the Committee is the absence of accurate and timely information that would allow one to compare how Canada's broadcasting system compares to other countries. The absence of this information goes to the heart of the governance challenge that faces Canada's broadcasting system. Indeed, departments, boards and agencies need such information to fulfill their responsibilities; know what constitutes reasonable information for good governance; be able to act on the information; and report on the organization's effectiveness.[illegible] However, because these groups are arm's length from government, they need to establish a mechanism whereby they can agree as to how they should define, collect and share information on an ongoing basis. Accordingly:

RECOMMENDATION 19.15:

The Committee recommends that the responsible departments and stakeholders put in place a mechanism to collect relevant, timely and comparable performance measures on the Canadian broadcasting system. This mechanism should include measures to assess how well the Canadian broadcasting system is performing compared to the systems of other jurisdictions.

This system should include a detailed specification of the responsibilities of each of the agencies for providing information to each other and for reporting on their contributions to the broadcasting system. Moreover:

RECOMMENDATION 19.16:

The Committee recommends that representatives from the responsible departments and agencies form a broadcast reporting and measurement committee to develop a public accountability framework and measurement system.

J. Monitoring the Canadian Broadcasting System

An overarching question is how well the institutions charged with implementing the Act have carried out their public trust and whether the spirit of the Act is being adhered to. **The Committee is convinced that some of the goals of the Act have not been properly implemented and enforced.** A main point, however, is that there is now no mechanism in place to allow Parliament to determine whether the objectives of the Act are being met. The problems uncovered by the Committee's study demonstrate that the Act needs to be regularly monitored.

One way to do this would be to create a Canadian broadcasting monitor. The monitor's job (bolstered by an office that has a small staff and a reasonable budget to commission independent studies) would be to report annually to Parliament and to the Heritage Committee about the health of the broadcasting system, based on the objectives spelled out in the *Broadcasting Act*. The monitor's office would act as an early warning system — identifying problems, raising issues and asking tough questions. It would play a role that is similar to that of Status of Women Canada, the Office of the Information Commissioner, or the Office of the Privacy Commissioner.

The monitor would be responsible for monitoring and reporting on the extent to which department and agencies have implemented plans and met objectives established by the *Broadcasting Act*, or related legislation. This would include appraising the quality and appropriateness of reporting, measurement and evaluation systems established by relevant departments and agencies.

Environment and Sustainable Development Monitoring Activities

Planned Spending: 2001-02, $2.3 M; 2002-03, $2.5 M.

The Commissioner of the Environment and Sustainable Development has a duty to monitor and report in the extent to which departments and agencies have implemented their action plans and met the objectives outlined in their sustainable development strategies. The Commissioner also conducts value-for-money audits and studies of environmental and sustainable development issues, and monitors a process whereby the public can petition government ministers on environmental matters. The Commissioner works with about 35 staff.

Source: Office of the Auditor General, 2002-03 Estimates, A Report on Plans and Priorities.

For a variety of reasons, the Committee is convinced that the most sensible arrangement would be to locate the monitor within the Office of the Auditor General. The monitor could function along the lines of the Commissioner for the Environment and Sustainable Development (see inset), which operates within the purview of the Auditor General's office. The Committee feels that the level of resources required need not be greater than that of the Environment and Sustainable Development Commission ($2-3 million per year) and that the monitor would benefit from existing expertise within the Office of the Auditor General. **The Committee believes strongly that the creation of a Canadian broadcasting monitor would go a long way to resolving many of the problems of governance and accountability as identified in this report.** With this in mind:

RECOMMENDATION 19.17:

The Committee proposes the creation of a Canadian broadcasting monitor, incorporated into the Office of the Auditor General, to report annually on how well the objectives of the *Broadcasting Act* are being met.

Endnotes

[1] Richard J. Schultz, *The Operation and the Effectiveness of the Canadian Radio-television and Telecommunications Commission*, Prepared for the Standing Committee on Canadian Heritage, p. 28.

[2] Cited in G. Leclerc, W. David Moynagh, Jean-Pierre Boisclair and Hugh R. Hanson, *Accountability, Performance Reporting, Comprehensive Audit: An Integrated Perspective* (Ottawa: CCAF-FCVI, 1996), p. 8.

[3] Adapted from G. Leclerc, ibid.

[4] Ibid, p. 9.

[5] Ibid, p. 16.

[6] In a recent paper, Professor Schultz has described this problem as: "the relative ease of technological exit" from the Canadian communications sector. See "From Master to Partner to Bit Player: The Diminishing Capacity of Government Policy," Prepared for Publication: *"How Canadians Communicate 2001-2002"* (Calgary: University of Calgary, 2002).

[7] Schultz, *The Operation and Effectiveness of the CRTC*, p.16.

[8] Ibid, p. 27-28.

[9] Problems of definition and measurement are discussed at various points in chapters 3, 4, 5, 8, 9, and 19.

[10] *Second Report of the Special Committee on Reform of the House of Commons* (Ottawa: House of Commons, 1985), p. 6.

[11] See Leclerc et. al., p. 45.

[12] Frank Foster, *Broadcasting Policy Development* (Ottawa: Franfrost Communications, 1982), p. 212.

[13] Meeting of the Standing Committee on Canadian Heritage, 20 November 2001.

[14] Ibid.

[15] Charles Dalfen became the new Chair of the CRTC in January 2002.

[16] Meeting of the Standing Committee on Canadian Heritage, 22 November 2001.

[17] Ibid.

[18] Meeting of the Standing Committee on Canadian Heritage, 20 November 2001.

[19] Several sections of the *Broadcasting Act* (e.g., sections 26 and 36) grant some general powers to the Governor in Council. These allow the government to order the Commission to reconsider a decision or take specific action. The implications of Governor in Council powers for the overall governance of the Canadian broadcasting system were addressed in Chapter 18.

[20] See, for example, pages 44-47 in *A Sense of Place, A Sense of Being: The Evolving Role of the Federal Government In Support of Culture in Canada*, Report of the Standing Committee on Canadian Heritage (Ottawa: House of Commons, 1999).

[21] The language of objectives and sub-objectives lends a tedious tone to the discussion. However, some method has to be used to describe the difference between very general and desirable goals (e.g., "strengthen the cultural fabric") and what this means in practice (e.g., increases in audiences to English-language Canadian drama).

[22] See Section 3(i) of the 1991 *Broadcasting Act*. Chapter 6 discusses this issue of defining "regional" in detail.

[23] Schultz, *The Operation and Effectiveness of the CRTC*, p. 28.

[24] Meeting of the Standing Committee on Canadian Heritage, 9 April 2002.

[25] 1999 Spry Memorial Lecture, www.fas.umontreal.ca.

[26] Ibid.

[27] Meeting of the Standing Committee on Canadian Heritage, 30 April 2001.

[28] Meeting of the Standing Committee on Canadian Heritage, 29 November 2001.

[29] Concerns with weak enforcement do — at least indirectly — represent a form of support for the CRTC's role in upholding Canada's broadcasting policy, but can hardly be considered praise.

[30] *The Uncertain Mirror*, Report of the Special Senate Committee on Mass Media (Davey Committee) (Ottawa: Queen's Printer, 1970), p. 195.

[31] Meeting of the Standing Committee on Canadian Heritage, 25 February 2002.

[32] Meeting of the Standing Committee on Canadian Heritage, 30 April 2002.

[33] Ibid.

[34] Meeting of the Standing Committee on Canadian Heritage, 21 May 2002.

[35] Ibid.

[36] Ibid.

[37] Ibid.

[38] Meeting of the Standing Committee on Canadian Heritage, 7 May 2002.

[39] Ibid.

[40] www.strategis.ic.gc.ca

[41] Meeting of the Standing Committee on Canadian Heritage, 7 May 2002.

[42] Emphasis in original.

[43] These observations by the CRTC are doubly interesting because they occurred during a period when the CBC was continuing to adjust to substantial reductions in its parliamentary appropriation.

[44] A problem with fines is that they are criminal charges, where one has to prove intent. Experts on the industry have been known to overlook this point.

[45] For purposes of comparison, see the U.S. Federal Communications Commission's "Guidelines for Assessing Forfeitures", www.fcc.gov.

[46] The Commission began issuing an annual *Broadcast Policy Monitoring Report* in 2000. While this document, does provide tremendously useful raw data on the system and its economic profile, it is not a comprehensive report card on the Act or the system. For example, section 3 (*d*)(iii) of the *Broadcasting Act* states that the system should provide "employment opportunities" to Canadians; the *Monitoring Report* makes no mention of this subject.

[47] Even if the objectives were more clearly specified there is no commonly accepted method for placing a value on a public service. "Over recent years, governments have struggled to determine how much money should be spent on public services, what components of a public service are most valuable, and whether the program provides value beyond what would be received if the service was provided by the private sector." Adam Finn, Stuart McFadyen, Colin Hoskins and Maureen Hupfer, "Quantifying the Sources of Value of a Public Service," *Journal of Public Policy and Marketing*, Fall 2001, p. 225-239.

[48] Leclerc et al., p. 99.

[49] Meeting of the Standing Committee on Canadian Heritage, 27 November 2001.

[50] Cited in Robert MaCauley, *Practice and Procedure Before Administrative Tribunals*, Vol. 2 (Toronto: Carswell, 1991), p. 32-39.

[51] A detailed history can be found in Chapter 6 of the April 2002 *Report of the Auditor General of Canada to the House of Commons*.

[52] The Canadian Comprehensive Audit Foundation (CCAF) has a number of publications that deal with the links between governance and information. See for example, *Information the Currency of Good Governance* (Ottawa: CCAF-FCVI), 1998.

STEERING THE SYSTEM

Chapter 20

Conclusion

The one constant in broadcasting is change. Since Reginald Fessenden invented radio in 1900, a long series of inventions and improvements have enabled radio and later television to reach virtually every household in Canada. Perhaps one of the most impressive advances in recent times has been the introduction of direct-to-home satellite services, which provide the same range and quality of service whether a person lives on the coast of Labrador, the Ungava peninsula, the northern tip of Vancouver Island, or in major centres such as Montréal, Toronto and Vancouver.

As noted throughout this report, however, the ability to offer a wide range of broadcasting services to all Canadians does not come without new challenges. For example, uses of new technologies have marginalized other services such as local and community television. Thus, where some have gained, others have lost, which is why great care is needed in the support and regulatory programs that govern the broadcasting system.

Notwithstanding these challenges, it is indisputable that Canadians today enjoy a remarkable range of broadcasting services. And in those areas where problems exist, the Committee is persuaded that the recommendations made in this report will help. For example, although witnesses raised legitimate concerns about community television and radio, the Committee is convinced that these issues, with appropriate adjustments in policy, can be addressed.

It is important to remember, however, that the many new services now available to Canadians will most certainly increase the difficulties of trying to govern and regulate our broadcasting system. This does not mean that our system can no longer be governed; on the contrary, the Committee sees governance as an essential element of the Canadian broadcasting system and notes that the one thread that unites all previous studies of broadcasting and iterations of the *Broadcasting Act* is the notion that government involvement is central to ensuring that Canadians have a wide choice of Canadian programming.

In a sense, this goal of increased choice has been met, Canadians have more programming choices than ever. But choice, like improvements in technology, is a double-edged sword. On the one hand, there is the benefit of choice but, on the other hand, attracting Canadian audiences to Canadian programs is harder than it has ever been. Despite intense competition — and seemingly endless increases in choice — Canadians continue to watch a great deal of Canadian news, sports and children's programming.

That being said, for a variety of reasons that cannot be easily replicated in English Canada, French-language program producers have been able to develop a broad range of television programs that are extremely attractive to, and popular with, French-speaking audiences. As a result, the top 20 television programs in Francophone Canada have been Canadian for more than a decade. But this situation cannot be — and has never been — the case in English Canada where programmers have always had to compete with programs from the United States. We have, however, developed a set of regulations and funding measures that have increased the production and availability of Canadian drama and documentaries. By extension, there have been modest increases in audiences for English-language drama.

This is perhaps one of the most difficult challenges facing the policy-makers, regulators and supervisors of the Canadian broadcasting system. Drama is expensive and in English Canada the competition has been and will always be intense. The Committee is convinced, however, that adequate funding coupled with an appropriate regulatory regime can ensure the production and viewing of high-quality Canadian drama.

One significant and positive change which has occurred since the 1991 revisions to the *Broadcasting Act* has been the extraordinary growth of an independent production sector capable of producing world class television programs. The independent production sector has, over the past 10 years, grown much faster than the Canadian economy and now provides direct and indirect employment for thousands. The emergence of this sector is one of many success stories that deserve celebration. Moreover, the Committee is convinced that the independent production sector will be a vital factor in Canada's ability to continue producing world-class television programs.

Apart from funding measures, regulations and a strong independent production sector there is a need for other initiatives. At least part of the success of francophone television programs is linked to the strong promotion of a "star system"; it is difficult to imagine English-language television drama being successful without similar support and promotion.

But making television shows is an expensive undertaking and circumstances dictate that we recognize this fact. Indeed, the many royal commissions, parliamentary committees and task forces on broadcasting have all acknowledged this reality. As early as 1957, for example, the Royal Commission on Broadcasting, chaired by Robert Fowler, was able to draw upon a long list of similar observations on this point. These included:

> It is obviously in the national interest that television in Canada should be essentially Canadian and that it carry in large proportion Canadian material, produced by Canadians. ... Such a development will undoubtedly be more expensive.[1]
>
> If we in Canada are to have a more plentiful and better cultural fare, we must pay for it.[2]
>
> Your Committee is aware that production of adequate television programs in Canada is not easy from an economic point of view. It is also aware that the distribution nationally of such programs in this country is costly.[3]
>
> Your Committee is mindful of the importance of television. ... The evidence produced to your Committee confirms its views, however, that television is a costly and complicated medium of communication.[4]

Thereafter, the Commission embraced "two ideas clearly and without qualification. Canadians want Canadian broadcasting and they expect to have to pay for it."[5] With the benefit of nearly 50 years of Canadian broadcasting experience since the Fowler Commission made this declaration, the Committee is of the same view, but, at the same time, is convinced that this challenge entails the will to identify and rapidly deal with changing circumstances.

To repeat — television programming is expensive. Furthermore, it takes several years to bring new programs to the screen. For these reasons (and others), the financing of such productions is not particularly compatible with the annual financial planning system of the Government of Canada. While the Committee fully supports the fact that Parliament is supreme, it is of the view that some mechanism should be found to provide stable, long-term funding for the major federal agencies involved in supporting television programs (i.e., the CBC, CTF, Telefilm and the NFB).

The provision of stable, long-term funding would make it easier for these various agencies and bodies to meet the mandates that Parliament has given them. Funding stability does not mean, however, that they would report less frequently to Parliament. On the contrary, the Committee is convinced that mandates need to be more clearly defined and that there should be substantial change and improvements to reporting requirements.

Previous committees and royal commissions have repeatedly raised the issues of stable funding, clear mandates and reporting to Parliament. As such, none of these issues are particularly new, nor should they be, for that matter, surprising. These issues are, however, more important than ever before given the emerging challenges that confront the Canadian broadcasting system.

Over the longer term there are more difficult challenges that will confront the system. Some of these have to do with managing the transition from analog to digital technologies. This will require determination, a willingness to work with the key players in the broadcasting system and an ability to move quickly, experiment, learn from mistakes and adapt. Although this will be a challenge, the Committee is certain that it can be realized.

Perhaps the Committee's greatest concern is for the overall governance of the Canadian broadcasting system. While Canada has developed ingenious support systems such as the CBC, Telefilm Canada, the CTF and a sophisticated regulatory scheme, it has not succeeded in creating a system within which the various elements of the system work together harmoniously. The Committee recognizes that this is not due to ill will or deliberate intent, but rather the ad hoc way in which the system has evolved over time. As this report has noted several times, the Canadian broadcasting system examined during the course of this study is not one that was consciously designed but one that has evolved.

While we can and should applaud our successes, the Committee is convinced that the coming period of change will be more trying and more challenging than any faced in the past. There are at least two reasons for this. First, the ability to deliver even more radio and television programming is already upon us. At the outset of this study it was possible to subscribe to more than 100 television channels. Since that time, more than 50 new digital television services have been launched. Today, it is possible to subscribe to more than 350 channels. The proliferation of channels will lead to even greater audience fragmentation. It may also contribute to the eventual demise of conventional networks, as we have known them for the last 50 years.

A second reason for concern is that the current structure of government, is poorly equipped to handle the challenges that the immediate future will bring. Broadcasting and all the companies and individuals that make up the system is simply too large and important to Canada to be left to a series of ad hoc arrangements. Moreover, as this report has documented, there are some serious issues with the quality and timeliness of the information available. Furthermore, there are significant problems with the governance of the system and of its individual elements.

But fine-tuning one or two of these problems will not likely produce the results that this Committee, or Canadians as a whole, would want or expect. This is why the Committee has recommended a review and an extensive reorganization of substantial portions of the existing governance structure. Indeed, the Committee is of the view that if we accept the status quo, we risk squandering what has been gained over the past 70 years.

It is doubtful that many Canadians are interested in the history of broadcasting policy, the finer points of regulation or the differences between a broadcasting undertaking and a broadcast distribution undertaking. It is equally unlikely that the average Canadian citizen is interested in antennas, cable or fibre optics and the underlying physics involved. Broadcasting policy and regulations may be necessary, and the hardware and software are certainly necessary but, in general, what people are interested in is programming: music, comedy, drama, sports, variety, cartoons, news and the weather.

Although the challenges are substantial, the Committee is persuaded that Canadians have the energy and talent to rise to the occasion. Government will have to play its part in concert with the key players in the broadcasting system. Thus, although the challenges are great the Committee shares the perspective of the 1957 Royal Commission on Broadcasting when it said:

> We have a good broadcasting system. The joining together in one system of public and private ownership suits Canada and serves Canadians well. It has had its confusions in the past and its rather silly quarrels. But, in essence, the concept is a good one and we would be wise to keep it very much as it is but improved, strengthened and tidied up where possible.[6]

Nevertheless, it should be remembered that there are limits to what government can do. Infinite resources are never available, and regulation can only accomplish so much. The television programs that Canadians can take pride in and want to watch are created and produced by talented individuals working in teams. The most fundamental task, therefore, is to organize government support, regulations and funding so that they support the resourcefulness and talents of the individuals who will create the programs Canadians will want to hear or watch. This will require a delicate balance. A delicate balance between regulations and programs, between tradition and innovation, between government policy and the creativity of individuals in the private sector. Doing so will be an ongoing process; a process that will ultimately be judged by our capacity to nurture Canada's creative and entrepreneurial spirit so that it may be shared with Canadians and, indeed, the world.

Endnotes

[1] Report of the Royal Commission on Broadcasting (Fowler Commission) (Ottawa: Queen's Printer, 1957), p. 249.

[2] Ibid p. 250.

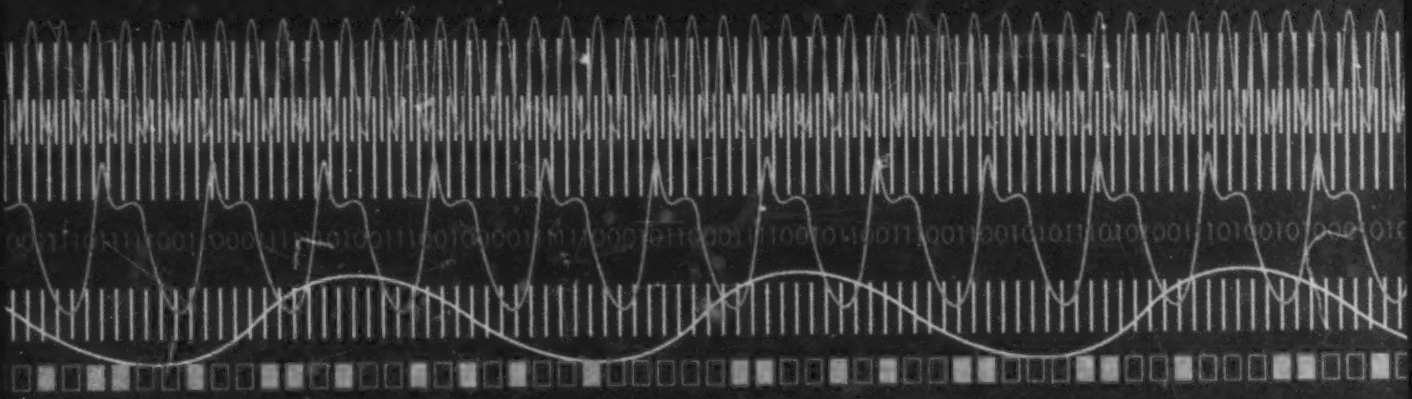
[3] Ibid.

[4] Ibid.

[5] Ibid.

[6] Ibid., p. 287.

CHAIR'S POSTSCRIPT



CHAIR'S POSTSCRIPT

Canada's growth as a country has been shaped by gradual and incremental consensus and compromise, rather than by decisions and events of sudden or radical change. Its structures and institutions of governance have followed the same cautious and measured evolution, building on precedent and experience, reflecting carefully the pace of societal and technological changes across the decades.

Our broadcasting system is a typical example of this gradual evolution and growth. It reflects, today, the significant body of policy and legislative instruments created and modified carefully and often painstakingly over the years.

The Committee came to the conclusion that, taken as a whole, our broadcasting system has achieved a balance of stability and success which deserves to be recognized.

The Committee also agreed that the *Broadcasting Act* of 1991, the system's legislative anchor, is an outstanding and judiciously-crafted document, which needs little basic change after a decade and more, so well do its objectives and aims reflect what an ideal Canadian broadcasting system should aspire to be.

However, this said, many areas of concern, as well as suggestions to address them, were brought forward by the large number of witnesses during the Committee's hearings and travels and in the briefs they submitted.

The Committee felt very strongly that its main focus regarding the study, should be the public and the public interest, and how effectively or otherwise they are served by the Canadian broadcasting system. The Committee came to the conclusion that its recommendations should reflect changes and improvements most appropriate to make the system more responsive and more accountable to Canadians at large.

In doing so, the Committee was conscious of the complex web of checks and balances built up over the years around the broadcasting system as it gradually evolved into its present integrated state. Thus the Committee concluded the challenge was not to re-invent a broadcasting system which is generally satisfactory, indeed in many ways successful, but to recommend improvements to its key components and elements.

Through the recommendations the Committee has proposed, it has sought to stress and reinforce the special role of the national public broadcaster, whilst recognizing private broadcasting as a key component of the system. It has given voice to the concerns of the not-for-profit broadcasters, and to the pleas of local and regional communities, including those of minority-language communities.

The Committee recognized the essential role of the CRTC as broadcasting regulator, whilst proposing several recommendations toward streamlining its governance and processes.

Indeed, the issue of governance, and of greater transparency and accountability within public institutions empowered by the *Broadcasting Act*, looms large in the report.

Other central questions dealt in depth by the Committee were the issues of Canadian content, of ownership including cross-media ownership, of convergence and its impact on editorial autonomy and information accessibility.

The Committee feels that all in all the report and its recommendations are balanced, credible, and achievable, and will be considered as such by the Government in its response.

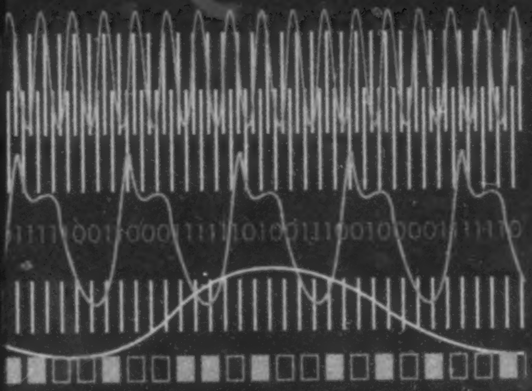
The broadcasting system is vital for our lives as Canadians. It expresses our way and sense of being, it connects us as people and citizens, and it opens us to other people and peoples of the world.

As a country of vast dimensions and distances, broadcasting is the key link among us, and our voice and ears. As a nation committed to peacemaking and peacekeeping, and truly engaged in multilateralism, broadcasting opens us to the world around us, and makes us more conscious and better world-citizens.

Not only must we preserve our broadcasting system, but we must strengthen it and enhance it, so as to ensure its long-term stability and future. This report has tried to submit what we believe are credible and achievable ideas toward this end.

Clifford Lincoln, MP

APPENDICES



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APPENDICES

Appendix I

List of Recommendations

Chapter 5
Canadian Programming

RECOMMENDATION 5.1:[1]

The Committee recommends that the appropriate department develop a comprehensive and integrated Canadian programming policy and strategy that:

(a) establishes clear goals for the programs that support the creation, production, distribution and viewing of Canadian television programming;

(b) includes a clear statement of the cultural objectives, realistic estimates of the cost of meeting these objectives and a comprehensive set of performance measures;

(c) simplifies the process to obtain funding so that broadcasters and producers can focus on creation; and

(d) includes a strong emphasis on measures to ensure that Canadian programming is viewed by Canadian audiences and that it includes appropriate support incentives and performance measures.

RECOMMENDATION 5.2:

The Committee recommends that the existing point system for the certification, funding and production of Canadian television programming be redesigned to:

(a) recognize important differences among genres (e.g., drama, documentaries and animation);

(b) recognize the nationality of the authors, directors, performers and technicians;

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[1] The expression "appropriate department" is used in several recommendations in this report. This is because recommendation 19.1 calls on the government to consider the creation of a department of communications responsible for support to broadcasting, telecommunications and cultural industries.

(c) focus on the achievement of cultural objectives;

(d) ensure that Canadian content reaches its audiences.

RECOMMENDATION 5.3:

To achieve consistency and coherence, the Committee recommends that decisions about Canadian content be made by a centralized body mandated to administer Canadian content certification.

RECOMMENDATION 5.4:

The Committee recommends that a distinctive identifier be assigned to each Canadian program to facilitate tracking of investment, promotion, and eventual measurements of effectiveness (e.g., audience levels).

RECOMMENDATION 5.5:

The Committee recommends that the appropriate department evaluate the existing federal tax credit system that supports Canadian television programming to find means to improve the way support is managed and delivered to Canadian independent producers.

RECOMMENDATION 5.6:

The Committee recommends that the appropriate department investigate the feasibility of developing a more flexible tax credit system for Canadian television production (e.g., levels of support that increase with more involvement by Canadian creators).

RECOMMENDATION 5.7:

The Committee recommends that the mandates of the Canadian Television Fund (CTF) and Telefilm Canada be reviewed and refocused to ensure a clear separation of responsibilities and, where necessary, greater synergies in areas where responsibilities must be shared. This review should include suggestions for the governance of the CTF.

RECOMMENDATION 5.8:

The Committee recommends that the Department of Canadian Heritage investigate ways to create greater efficiencies in the administration of the CTF and

Telefilm Canada, including the adoption of mechanisms that would allow for a centralized and harmonized application process and a reduced paper burden.

RECOMMENDATION 5.9:

The Committee recommends that the Equity Investment Program (EIP) used for television programming be evaluated to determine the costs and benefits of the current approach.

RECOMMENDATION 5.10:

The Committee recommends that the Canadian Television Fund be recognized by the government as an essential component of the Canadian broadcasting system. This recognition must include increased and stable long-term funding. The CRTC should be directed to oblige licensees, with the exception of small cable operators, to contribute to the CTF.

RECOMMENDATION 5.11:

The Committee recommends that the government consider establishing specific targets for all of its Canadian content policies and programs and that the appropriate agencies and departments report annually to Parliament on these targets.

RECOMMENDATION 5.12:

The Committee recommends that all changes to existing Canadian content policies and programs be evaluated at two-year intervals.

RECOMMENDATION 5.13:

The Committee recommends that the CRTC be directed by order in council to review its 1999 television policy for the exhibition of priority programming in prime time.

Chapter 6
The National Public Broadcaster

RECOMMENDATION 6.1:

The Committee recommends that Parliament provide the CBC with increased and stable multi-year funding (3 to 5 years) so that it may adequately fulfill its mandate as expressed in the *Broadcasting Act*.

RECOMMENDATION 6.2:

The Committee recommends that for greater clarity the *Broadcasting Act* be amended to recognize the value of new media services as a complementary element of the CBC's overall programming strategy.

RECOMMENDATION 6.3:

The Committee recommends that the CBC deliver a strategic plan, with estimated resource requirements, to Parliament within one year of the tabling of this report on how it would fulfill its public service mandate to:

(a) deliver local and regional programming.

(b) meet its Canadian programming objectives.

(c) deliver new media programming initiatives.

RECOMMENDATION 6.4:

The Committee recommends that the impacts and outcomes of the CBC's strategic plans (for the delivery of local and regional programming; Canadian programming; and, cross-platform, new media initiatives) be reported on annually and evaluated every two years. These evaluations should meet Government of Canada program evaluation standards.

RECOMMENDATION 6.5:

The Committee recommends that the CBC submit a plan to Parliament detailing its needs for the digital transition and that it receive one-time funding to meet these needs.

RECOMMENDATION 6.6:

The Committee reaffirms the importance of public broadcasting as an essential instrument for promoting, preserving and sustaining Canadian culture and recommends that the government direct the CRTC to interpret the *Broadcasting Act* accordingly.

Chapter 7
Not-for-Profit Broadcasting

RECOMMENDATION 7.1:

The Committee recommends that the Department of Canadian Heritage take immediate and appropriate action on the recommendations of the McGregor Report on the needs of Northern and Aboriginal broadcasters.

RECOMMENDATION 7.2:

The Committee recommends that the rules governing the Canadian Television Fund and Telefilm Canada be amended, in consultation with APTN and other Northern and Aboriginal stakeholders, to more effectively address the special needs and conditions of Aboriginal television production and broadcasting.

RECOMMENDATION 7.3:

The Committee recommends that the government develop a support strategy to ensure that Aboriginal programming intended for national audiences on APTN can be versioned in English or French, as required.

RECOMMENDATION 7.4:

The Committee recommends that the Governor in Council by order direct the CRTC to make it mandatory for all broadcasting distribution undertakings (BDUs), without exception, to distribute to all their subscribers the video and audio signals of the debates of Parliament via CPAC in both official languages.

RECOMMENDATION 7.5:

The Committee recommends that the CPAC signal distributed as part of the basic cable service be protected from displacement by closed circuit video programming, and that the *Broadcasting Distribution Regulations* be amended in this regard if necessary.

RECOMMENDATION 7.6:

The Committee recommends that the appropriate department review the mandate of Radio Canada International, with a view to identifying the necessary resources required to strengthen its services.

RECOMMENDATION 7.7:

The Committee recommends that the CRTC permit the national distribution of all English and French provincial educational broadcasters.

RECOMMENDATION 7.8:

The Committee recommends that the *Broadcasting Act* be amended to recognize not-for-profit public broadcasters as an integral part of the Canadian broadcasting system.

RECOMMENDATION 7.9:

The Committee recommends that the CRTC be directed to ensure that audiences have fair access to not-for-profit public broadcasters on broadcasting distribution undertakings.

Chapter 8
The Private Sector

RECOMMENDATION 8.1:

The Committee recommends that the Department of Canadian Heritage create a committee composed of radio industry stakeholders to review and determine the level of success of the MAPL system. This study should include a review of definitions of Canadian content and the ways in which the system can foster the development of new artists.

RECOMMENDATION 8.2:

The Committee recommends that the Department of Canadian Heritage, in collaboration with the CRTC and radio industry stakeholders, develop a strategy to monitor and report annually on the extent to which the public policy goals for Canadian radio are being achieved.

RECOMMENDATION 8.3:

The Committee recommends that the appropriate department study the annual orbital slot licence fees charged to Canada's satellite companies to ensure that they do not place an unreasonable burden on the capacity of these companies to compete internationally.

RECOMMENDATION 8.4:

The Committee recommends that the Department of Finance and the Treasury Board, in conjunction with the Department of Canadian Heritage and the CRTC, study the rationale and fairness of Part II licence fees that are currently charged to broadcasters and distributors with a view to their elimination if found to be discriminatory. The results of this study should be reported to Parliament within one year of the tabling of this report.

RECOMMENDATION 8.5:

If it is determined that Part II licence fees should be eliminated or reduced, the Committee recommends that the CRTC, in consultation with the Department of Canadian Heritage and relevant broadcasting industry stakeholders, be encouraged to develop a plan for the reallocation of all or a portion of the former value of Part II fees back into the Canadian broadcasting system.

RECOMMENDATION 8.6:

The Committee recommends that the Government of Canada study the existing tax-credit system for advertisers with a view to making changes that would encourage the increased production of local, regional and national Canadian-made broadcast advertisements.

RECOMMENDATION 8.7:

The Committee recommends that the CRTC study the feasibility of imposing a requirement that Canadian broadcasters show a certain percentage of Canadian-made advertisements.

Chapter 9
Community, Local and Regional Broadcasting

RECOMMENDATION 9.1:

The Committee recommends that the CRTC require all broadcast distribution undertakings to provide community groups and volunteers with greater access to community television facilities for the production of local and community television programming.

RECOMMENDATION 9.2:

The Committee recommends that the Department of Canadian Heritage develop a Community, Local and Regional Broadcast Policy in consultation with key broadcasting industry stakeholders, including public, private, community, educational and not-for-profit broadcasters and related interest groups.

RECOMMENDATION 9.3:

The Committee recommends that the Government of Canada take steps to ensure that the departments and agencies responsible for the Canadian broadcasting system continue to treat the system as a single system.

RECOMMENDATION 9.4:

The Committee recommends that the federal government by order-in-council direct the CRTC to revisit its decision to exempt direct-to-home (DTH) satellite services from the provision of community television services.

RECOMMENDATION 9.5:

The Committee recommends that the Government of Canada investigate the feasibility of creating new digital channels for the distribution of the best of Canada's community, local and regional programming to Canadians.

RECOMMENDATION 9.6:

The Committee recommends that the CRTC work with broadcasting industry stakeholders to find a solution for the carriage of local signals via direct-to-home (DTH) satellite, to ensure as much local programming as is appropriate and feasible is made available to subscribers. This solution, however, should not lead to reduced contributions by DTH satellite service providers to the Canadian Television Fund.

RECOMMENDATION 9.7:

The Committee recommends that the government by order-in-council direct the CRTC to require Canada's direct-to-home (DTH) satellite service providers to carry the signals of local television stations of the CBC/SRC.

RECOMMENDATION 9.8:

The Committee recommends that the Department of Canadian Heritage create a Local Broadcasting Initiative Program (LBIP) to assist in the provision of radio and television programming at the community, local and regional levels.

RECOMMENDATION 9.9:

The Committee recommends that the Department of Canadian Heritage in collaboration with the CRTC be required to issue an annual report on community television. This report should include information on training, citizen access and involvement (paid and volunteer), types of support and the hours and range of programming produced.

RECOMMENDATION 9.10:

The Committee recommends that the changes to community, local and regional broadcasting that result from the implementation of the recommendations made in this report be evaluated by the appropriate department within two years of their introduction and at reasonable intervals thereafter (e.g., every five years). These reports should also be submitted to this Committee.

Chapter 10
Northern and Aboriginal Broadcasting

RECOMMENDATION 10.1:

The Committee recommends that section 3.(1)(o) of the *Broadcasting Act* be amended to read "programming that reflects the Aboriginal cultures of Canada should be provided within the Canadian broadcasting system." This amendment would remove the qualifying phrase "as resources become available for the purpose."

RECOMMENDATION 10.2:

The Committee recommends that a fund be developed by the appropriate government department to assist Northern and Aboriginal broadcasters with capital equipment replacement costs.

RECOMMENDATION 10.3:

The Committee recommends that the Northern Native Broadcast Access Program be preserved and that its funding be made stable and increased to reflect a reasonable inflationary increment.

RECOMMENDATION 10.4:

The Committee recommends that funds provided for the distribution of Northern programming (e.g., the Northern Distribution Program) adequately cover the cost of distribution.

RECOMMENDATION 10.5:

The Committee recommends that the appropriate departments, in collaboration with public and private broadcasters, develop a training program for Northern and Aboriginal broadcasters.

RECOMMENDATION 10.6:

The Committee recommends that the Northern Native Broadcast Access Program, the Northern Distribution Program and related support measures be evaluated two years after renewed funding is made available.

RECOMMENDATION 10.7:

The Committee recommends that the CRTC require direct-to-home satellite services to provide CBC North programming to Canada's Northern regions.

Chapter 11
Ownership

RECOMMENDATION 11.1:

The Committee recommends that the CRTC be directed to strengthen its policies on the separation of newsroom activities in cross-media ownership situations to ensure that editorial independence is upheld.

RECOMMENDATION 11.2:

The Committee recommends that the CRTC put in place a mechanism to ensure the editorial independence of broadcasting operations. A report to Parliament should be made by an appropriate authority (e.g., the Canadian broadcasting monitor) on an annual basis.

RECOMMENDATION 11.3:

The Committee recommends that the Government of Canada issue a clear and unequivocal policy statement concerning cross-media ownership before 30 June 2004.

RECOMMENDATION 11.4:

Until the Government of Canada declares its policy on cross-media ownership, the Committee recommends that:

(a) The CRTC be directed to postpone all decisions concerning the awarding of new broadcast licences in cases where cross-media ownership is involved.

(b) Existing licence renewals that involve cross-media ownership be automatically extended (i.e., an administrative renewal) for a minimum of two years and a maximum of three years.

RECOMMENDATION 11.5:

The Committee recommends that the existing foreign ownership limits for broadcasting and telecommunications be maintained at current levels.

Chapter 12
The Digital Transition

RECOMMENDATION 12.1:

The Committee recommends that the responsible federal departments and agencies develop a comprehensive plan for the digital transition in conjunction with the broadcasting industry and related public, private and not-for-profit stakeholders.

RECOMMENDATION 12.2:

The Committee recommends that the digital transition be managed in such a way that the broadcasting system provides fair and open access to distributors, broadcasters, listeners and viewers.

RECOMMENDATION 12.3:

The Committee recommends that appropriate hardware and software standards be established to protect listeners' and viewers' investments in digital technology and to prevent the use of proprietary technology and anti-competitive behaviour that may limit fair competition and access to subscribers.

RECOMMENDATION 12.4:

The Committee recommends that regulations be developed to prevent the manipulation or change in any way by distributors of signals downloaded to or by subscribers.

RECOMMENDATION 12.5:

The Committee recommends that local stations should continue to have priority carriage through the digital transition.

RECOMMENDATION 12.6:

The Committee recommends that simultaneous substitution be preserved during the digital transition.

RECOMMENDATION 12.7:

The Committee recommends that government policy allow all broadcasters and distributors to benefit fairly from the potential revenues available from a variety of new sources associated with their regulated activities.

RECOMMENDATION 12.8:

The Committee recommends that the CRTC develop regulations to ensure that the data collected by broadcasters and/or broadcasting distribution undertakings from the interactive and feedback capabilities of set-top boxes and other digital devices be in compliance with applicable privacy and consumer laws.

RECOMMENDATION 12.9:

The Committee recommends that the government work with broadcasting industry stakeholders to ensure that measurement and reporting techniques are devised to gauge the spread of Canadians' uses of digital technologies.

RECOMMENDATION 12.10:

The Committee recommends that the Department of Canadian Heritage establish a cost-sharing strategy to ensure that the archival footage of Canada's broadcasters is not lost due to deterioration.

Chapter 15
Accessibility

RECOMMENDATION 15.1:

The Committee recommends that section 3(p) of the *Broadcasting Act* be amended to read "programming accessible by disabled persons should be provided within the Canadian broadcasting system;" This amendment would remove the qualifying phrase "as resources become available for the purpose."

RECOMMENDATION 15.2:

The Committee recommends that a training program for closed captioning and descriptive video services be developed and funded by the federal government.

RECOMMENDATION 15.3:

The Committee recommends that the federal government develop a program to assist broadcasters in providing closed-captioning and descriptive video services.

RECOMMENDATION 15.4:

The Committee recommends that once the appropriate training and assistance programs are in place, that escalating conditions for the amount of captioning and descriptive video provided by broadcasters be phased in with a view to reaching a target of 100% for captioning and descriptive video services.

RECOMMENDATION 15.5:

The Committee recommends that the *Broadcasting Act* explicitly instruct the CRTC to set rigorous requirements and enforcement mechanisms to eliminate discriminatory practices by broadcasters. These instructions must explicitly include the requirement that captioning and descriptive video services be phased in for all television programming with a view to reaching a target of 100% captioning and video descriptive services.

RECOMMENDATION 15.6:

The Committee recommends that the federal government amend the *Broadcasting Act* to enable the CRTC to make regulations establishing criteria for the awarding of intervener expenses to those applicants who need access to the Commission so that the voice of community concerns and challenges can be heard.

Chapter 16
The Black and Grey Satellite Market

RECOMMENDATION 16.1:

The Committee recommends that the CRTC permit Canadian broadcasting distribution undertakings to offer a wider range of international programming, while being respectful of Canadian content regulations.

Chapter 17
Globalization and Cultural Diversity

RECOMMENDATION 17.1:

The Committee recommends that the Department of Foreign Affairs and International Trade maintain the government's position that culture not be part of any ongoing and future international trade negotiations.

RECOMMENDATION 17.2:

The Department of Canadian Heritage should participate as fully as possible in any international discussions on broadcasting regulation.

RECOMMENDATION 17.3:

The Committee expresses its support for increased funding for efforts to enhance diversity in Canadian broadcasting. The CRTC, the CBC and the Canadian Television Fund should seek ways to ensure that their policies and procedures reflect the need to enhance diversity.

Chapter 18
Appointments and Conflicts of Interest

RECOMMENDATION 18.1:

The Committee recommends that the Department of Canadian Heritage, in consultation with the Standing Committee on Canadian Heritage, develop criteria and guidelines by 30 June 2004, governing the nomination of CRTC commissioners as well as members to the Board of Directors of the CBC.

RECOMMENDATION 18.2:

The Committee recommends that the CRTC be reduced in size from 13 to 9 commissioners and that the abolition of regional commissioners be considered. Proper consideration should also be given to ensuring that there is a linguistic and regional balance and that a diversity of viewpoints and experiences is reflected in the membership.

RECOMMENDATION 18.3

The Committee recommends that to avoid an actual or potential conflict of interest or unfair advantage or the appearance of it, a person who resigns or otherwise ceases to hold office as a member or senior staff employee of the Canadian Radio-television and Telecommunications Commission shall not hold a paid or unpaid position within an industry regulated by the CRTC for a period of two years after their employment or membership ceases. This requirement shall be made a condition of Commission employment or membership. During this time, they should receive up to 75% of their regular salary if they are unable to find suitable employment other than in the broadcast industry.

Chapter 19
Governance and Accountability

RECOMMENDATION 19.1:

The Committee recommends the creation of a department of communications, responsible for the Government of Canada's support for broadcasting, telecommunications and cultural industries.

RECOMMENDATION 19.2:

The Committee recommends that the government consider whether a comprehensive communications Act is required to integrate the existing *Broadcasting Act*, *Telecommunications Act* and *Canadian Radio-television and Telecommunications Act* into one piece of legislation.

RECOMMENDATION 19.3:

The Committee recommends that the responsible department develop a detailed and comprehensive policy statement for Canada's broadcasting system. This policy statement should expand on section 3 of the *Broadcasting Act* and include appropriate definitions of key terms.

RECOMMENDATION 19.4:

The Committee recommends that the mandates of the CBC, Telefilm, NFB and the CTF be more precisely related to the goals of the broadcasting system. In developing these requirements government officials should work with all interested parties, and pay special attention to ensuring a consistent approach to reporting results.

RECOMMENDATION 19.5:

The Committee recommends that the Government of Canada review the CRTC's mandate with a view to refocusing its role on cultural objectives, clarifying its role and establishing clear limits on its power to supervise, regulate, create and manage programs. This review should include consideration of how the CRTC is to relate to other agencies and organizations within the broadcasting system.

RECOMMENDATION 19.6:

The Committee recommends that the Government of Canada should require as part of a redefined CRTC mandate that CRTC regulations be reviewed by the appropriate department and approved by the Governor in Council.

RECOMMENDATION 19.7:

The Committee recommends that the Government of Canada should as part of its review of the mandate of the CRTC clarify the respective roles and responsibilities of the CRTC and the Competition Bureau with respect to broadcasting.

RECOMMENDATION 19.8:

The Committee suggests that the Standing Committee on Industry carry out a review of the role and resource requirements of the Competition Bureau as it relates to competition within Canada's broadcasting system.

RECOMMENDATION 19.9:

The Committee recommends that the CRTC's regulatory supervision of the CBC be limited to the approval of new licence applications.

RECOMMENDATION 19.10:

The Committee recommends that the federal government invite the CBC to come forward with a plan outlining its needs for additional radio and television licences for consideration by Parliament and the CRTC.

RECOMMENDATION 19.11:

The CRTC should have the power to impose a wider range of sanctions and more costly fines on those who fail to comply with regulations and in turn be directed to enforce these breaches of regulation.

RECOMMENDATION 19.12:

Once the mandate review of the CRTC has been completed, the Committee recommends that the Government of Canada ensure that the CRTC has the necessary resources and flexibility to carry out its redefined and clarified responsibilities.

RECOMMENDATION 19.13:

The Committee recommends that a renewed broadcasting policy include clear, measurable goals and objectives as well as a process for evaluation and accountability.

RECOMMENDATION 19.14

The Committee recommends that performance reporting requirements that match those of the Government of Canada's Treasury Board and are related to the goals of the broadcasting system be added to the mandates of the CBC, Telefilm, the National Film Board and the portion of the CTF that is supported by public funds.

RECOMMENDATION 19.15:

The Committee recommends that the responsible departments and stakeholders put in place a mechanism to collect relevant, timely and comparable performance measures on the Canadian broadcasting system. This mechanism should include measures to assess how well the Canadian broadcasting system is performing compared to the systems of other jurisdictions.

RECOMMENDATION 19.16:

The Committee recommends that representatives from the responsible departments and agencies form a broadcast reporting and measurement committee to develop a public accountability framework and measurement system.

RECOMMENDATION 19.17:

The Committee proposes the creation of a Canadian broadcasting monitor, incorporated into the Office of the Auditor General, to report annually on how well the objectives of the *Broadcasting Act* are being met.

APPENDICES

Appendix 2

Terms of Reference

The State of the Canadian Broadcasting System: Terms of Reference

Study Topic

The Standing Committee on Canadian Heritage has decided to undertake a study on the state of the Canadian broadcasting system and how successful it has been in meeting the objectives of the *Broadcasting Act* of 1991. As with previous studies by this Committee, the issues of Canadian content and cultural diversity will be central in the study of broadcasting.

Background

The process of developing a standardized public policy for the Canadian broadcasting system dates back to the Royal Commission on Radio Broadcasting of 1928. As the industry has evolved and expanded, numerous studies, commissions, parliamentary committees, government panels and task forces have continued to address this question.

The first legislation that provided a regulatory framework for Canada's broadcasters was the *Canadian Radio Broadcasting Act* of 1932. Following the arrival of television, this Act was replaced by successive versions of the *Broadcasting Act* in 1958, 1968 and 1991.

Over time, the *Broadcasting Act* has evolved into an instrument that serves to: confirm the Canadian Broadcasting Corporation's (CBC) mandate as a national broadcaster; place restrictions on foreign ownership; require the predominant use of Canadian creators and talent; and reaffirm a vision of the broadcasting system as a means of strengthening Canada's cultural, social and economic structures.

The Task Force on Broadcasting Policy conducted a comprehensive study of the *Broadcasting Act* in the mid-1980s. Its final report provided a framework for a consideration of Canada's broadcasting policy by the Standing Committee on Communications and Culture in 1987-88. The combined results of these efforts helped initiate needed revisions to the Act, culminating with the *Broadcasting Act* of 1991, the version that is still in force today.

With the passage of the amended *Broadcasting Act* in 1968, Parliament created the Canadian Radio and Television Commission (CRTC), an arm's-length agency responsible for regulating Canadian broadcasting.[1] The Commission's stated mandate is: "to maintain a delicate balance — in the public interest — between the cultural, social and economic goals of the legislation on broadcasting."[2] Its decisions have consistently served as an important baseline for discussions related to the future of the broadcasting sector, the role of policy, and the contributions that can be made to economic welfare, social interaction and communication.

Over the ten years since the introduction of the *Broadcasting Act* of 1991, advances in new communications technologies have opened up new possibilities for broadcasting, both in Canada and around the world. During this same period, neither the Department of Canadian Heritage nor its Standing Committee has undertaken a comprehensive consideration of the implications of these changes for the Canadian broadcasting system.

It is apparent, therefore, that there is a pressing need for the Standing Committee to review key aspects of the *Broadcasting Act* if it is to determine whether the Act remains an effective instrument for the CRTC to deal with the challenges facing the broadcasting industry and its stakeholders. In this regard, the Committee will place an emphasis on the following objectives from Section 3(d) of the *Broadcasting Act*:

The Canadian broadcasting system should:

- serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada;

- encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view;

- through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society; and

- be readily adaptable to scientific and technological change.[3]

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[1] In 1976, the CRTC was renamed the Canadian Radio-television and Telecommunications Commission to reflect the expansion of its jurisdiction to include common carriers.

[2] See: www.crtc.gc.ca.

[3] See: www.crtc.gc.ca.

Suggested Study Themes

To carry out its study, the Standing Committee has identified a set of key themes that it would like to address during this process. It does not consider itself limited by these topics, but anticipates that they will assist individuals and groups making submissions to the Standing Committee to situate more easily their experiences and perspectives within the scope of the present study.

1. **Context:**
    - The evolution of broadcasting technologies
    - Globalization
    - New media
    - International perspectives
2. **Cultural Diversity:**
    - Canadian content
    - French-language broadcasting
    - English-language broadcasting
    - Cultural diversity and minority broadcasting
    - Regional representation
    - Community television
3. **Broadcasting Policy:**
    - The development of Canada's broadcasting policy
    - The role of the federal government
    - The CRTC's role
    - Potential elements for new or revised legislation
4. **Ownership:**
    - Patterns of ownership
    - Cross-media ownership
    - Vertical integration
5. **Public/Private Sector:**
    - The Canadian Broadcasting Corporation
    - Provincial broadcasting
    - Cable and satellite services
6. **Production/ Distribution:**
    - Evolving production and distribution methods
    - Copyright questions
    - Specialty services
    - Internet

Suggested Study Questions

With the above themes in mind, the Standing Committee has identified two major subject areas:

(1) The present state of the Canadian broadcasting system, and

(2) Future directions for the Canadian broadcasting system

Those individuals presenting briefs and/or appearing before the Committee are asked to select from the list of key themes provided in the previous section when addressing the following questions pertaining to these two subject areas. Successful Parliamentary studies depend on outside individuals, companies and groups providing detailed information, some of which may be gathered solely for the Parliamentary study. The Standing Committee on Canadian Heritage seeks focused information on the Canadian broadcasting system, especially the state and future of Canadian content and cultural diversity in that system. To this end, researchers with the Committee will follow up briefs and contact potential witnesses to help obtain the needed, detailed information and to increase the efficiency of the study.

A. The Present State of the Canadian Broadcasting System

For over three quarters of a century Canada has wrestled with the problem of maintaining a Canadian identity in a constantly changing world. Trying to find a legislative or regulatory framework that would allow a balancing of cultural, social and economic concerns has led to the current system that combines public and private radio and television broadcasters. With these factors in mind, the Standing Committee has identified the following questions related to the present state of the Canadian broadcasting system:

1. Canadian Content and Cultural Diversity

- Are present policies or programs sufficient and appropriate to deal with the relationship between cultural policies and trade policies?
- Is the method of determining Canadian content still appropriate in relation to new media?
- We frequently hear about the "multi-channel universe." In this multi-channel universe, consumers have access to more programs — foreign programs, in particular — than ever before. What are the implications for the promotion of distinctively Canadian content?
- One of the goals of the *Broadcasting Act*, according to section 3(*d*)(i), is to "safeguard, enrich, and strengthen the cultural ... fabric of Canada." From your standpoint, what exactly is "the cultural fabric of Canada" and is it possible to draft content requirements that will, in fact, safeguard, enrich and strengthen it?

- What costs are borne by broadcasters because of Canadian content regulations?
- In light of recent trends, how can Canada maintain and promote a distinctive sense of local, regional, national and cultural identity while still reaping any possible benefits of changes to the broadcasting system?

2. New Technologies

- What are the changes in technology that have most significantly changed or are changing Canadian broadcasting?
- Has the change to new technology been more or less rapid than in other countries?
- How can any differences be explained?
- To what extent have recent developments in new communications technologies:

  a. disrupted the balance among cultural, social and economic concerns in the broadcasting system?

  b. affected the Canadian broadcasting system as a whole?

  c. affected the public/private mix in Canadian broadcasting?

3. Globalization

- To what extent has the trend towards increased globalization:

  a. disrupted the balance among cultural, social and economic concerns in the broadcasting system?

  b. affected the Canadian broadcasting system as a whole?

  c. affected the public/private mix in Canadian broadcasting?

4. Ownership

- Will technological change, especially the growing importance of the borderless Internet, undermine current ownership restrictions in broadcasting?
- Will globalization undermine current ownership restrictions in broadcasting?

- How has growing concentration of media ownership affected broadcasting?
- How has growing cross-media ownership affected broadcasting?

B. *Future Directions for the Canadian Broadcasting System*

The current radio and television broadcasting system in Canada includes a powerful public broadcaster, regulated private broadcasters and carriers, content requirements and foreign ownership restrictions. In light of today's increasingly globalized communications environment, the Standing Committee has identified the following questions related to future directions for the Canadian broadcasting system:

1. Canadian Content and Cultural Diversity

- How effective is the current Canadian content quota system in promoting distinctively Canadian programming in an era of digital channels and Internet-based programming?
- How effective is the current points system (based on the nationality of inputs — i.e., writers, producers, actors, directors, etc.) in the production of distinctively Canadian output?
- How can Canadian content requirements remain viable in the evolving broadcasting environment?
- How can the new media be used to promote Canadian creators both in Canada and beyond our borders?

2. The Public/Private Sectors

- Should the current public/private mix in Canadian broadcasting be maintained or modified?
- What should be the continuing role of the CBC and private broadcasters within such a public/private mix?
- Should the CBC form alliances with private broadcasters if size becomes a requirement for survival in broadcasting?
- What are the implications for competition policy if the CBC forms alliances with private broadcasters?

3. Globalization

- Should foreign broadcasters and media conglomerates play a role in the evolving Canadian broadcasting system? If yes, what role should they play?

- What are the implications of expanded trade treaties for:

- Canadian content requirements?

- subsidies to Canadian creators?

4. Ownership

- Should Canadian firms form alliances with foreign firms if size becomes a requirement for survival in broadcasting?

- What measures are required to maintain a distinctively Canadian broadcasting system?

5. Broadcasting Policy

- Should the convergence of broadcasting and telecommunications lead to a revamped CRTC or to a new and different type of regulator?

- Will broadcast licensing become a thing of the past in an era of digital channels and Internet-based programming?

- How can the Canadian broadcasting system be adapted to work in an era of increased globalization?

- How can existing legislation be amended and updated to take into account changes in broadcasting?

- How can the Canadian broadcasting system be adapted to ensure a balance among cultural, social and economic concerns?

- How does the split supervision of broadcasting activities by the Departments of Canadian Heritage and Industry affect cultural issues covered by the *Broadcasting Act* and other cultural policies and programs?

APPENDICES

Appendix 3

Broadcasting Act, 1991

1. This Act may be cited as the *Broadcasting Act*, 1991

Part I
General

Interpretation

[Definitions]

2. (1) In this Act,

["broadcasting" « *radiodiffusion* »]
"broadcasting" means any transmission of programs, whether or not encrypted, by radio waves or other means of telecommunication for reception by the public by means of broadcasting receiving apparatus, but does not include any such transmission of programs that is made solely for performance or display in a public place;

["broadcasting receiving apparatus" « *récepteur de radiodiffusion* »]
"broadcasting receiving apparatus" means a device, or combination of devices, intended for or capable of being used for the reception of broadcasting;

["broadcasting undertaking" « *entreprise de radiodiffusion* »]
"broadcasting undertaking" includes a distribution undertaking, a programming undertaking and a network;

["Commission" « *Conseil* »]
"Commission" means the Canadian Radio-television and Telecommunications Commission established by the Canadian Radio-television and Telecommunications Commission Act;

["Corporation" « *Société* »]
"Corporation" means the Canadian Broadcasting Corporation continued by section 36;

["distribution undertaking" « *entreprise de distribution* »]
"distribution undertaking" means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more that one permanent or temporary residence or dwelling unit or to another such undertaking;

["encrypted" « *encodage* »]
"encrypted" means treated electronically or otherwise for the purpose of preventing intelligible reception;

["licence « *licence* »]
"licence" means a licence to carry on a broadcasting undertaking issued by the Commission under this Act;

["Minister" « *minister* »]
"Minister" means such member of the Queen's Privy Council for Canada as is designated by the Governor in Council as the Minister for the purposes of this Act;

The Governor in Council designated the Minister of Canadian Heritage as the Minister for the purposes of this Act, effective on July 12, 1996

["network" « *réseau* »]
"network" includes any operation where control over all or any part of the programs or program schedules of one or more broadcasting undertakings is delegated to another undertaking or person;

["program" « *emission* »]
"program" means sounds or visual images, or a combination of sounds and visual images, that are intended to inform, enlighten or entertain, but does not include visual images, whether or not combined with sounds, that consist predominantly of alphanumeric text;

["programming undertaking" « *entreprise de programmation* »]
"programming undertaking" means an undertaking for the transmission of programs, either directly by radio waves or other means of telecommunication or indirectly through a distribution undertaking, for reception by the public by means of broadcasting receiving apparatus;

["radio waves" « *ondes radioélectriques* »]
"radio waves" means electromagnetic waves of frequencies lower than 3 000 GHz that are propagated in space without artificial guide;

["temporary network operation" « *exploitation temporaire d'un réseau* »]
"temporary network operation" means a network operation with respect to a particular program or a series of programs that extends over a period not exceeding sixty days.

[Meaning of "other means of telecommunication"]

(2) For the purposes of this Act, "other means of telecommunication" means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system.

[Interpretation]

(3) This Act shall be construed and applied in a manner that is consistent with the freedom of expression and journalistic, creative and programming independence enjoyed by broadcasting undertakings.

Broadcasting Policy for Canada

[Declaration]

3. (1) It is hereby declared as the broadcasting policy for Canada that

(*a*) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;

(*b*) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

(*c*) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;

(*d*) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and

(iv) be readily adaptable to scientific and technological change;

(*e*) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;

(*f*) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;

(*g*) the programming originated by broadcasting undertakings should be of high standard;

(*h*) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;

(*i*) the programming provided by the Canadian broadcasting system should

(i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,

(ii) be drawn from local, regional, national and international sources,

(iii) include educational and community programs,

(iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and

(v) include a significant contribution from the Canadian independent production sector;

(*j*) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;

(*k*) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;

(*l*) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;

(*m*) the programming provided by the Corporation should

(i) be predominantly and distinctively Canadian,

(ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,

(iii) actively contribute to the flow and exchange of cultural expression,

(iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,

(v) strive to be of equivalent quality in English and in French,

(vi) contribute to shared national consciousness and identity,

(vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and

(viii) reflect the multicultural and multiracial nature of Canada;

(*n*) where any conflict arises between the objectives of the Corporation set out in paragraphs (*l*) and (*m*) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (*l*) and (*m*);

(*o*) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;

(*p*) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;

(*q*) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

(*r*) the programming provided by alternative television programming services should

(i) be innovative and be complementary to the programming provided for mass audiences,

(ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,

(iii) reflect Canada's regions and multicultural nature,

(iv) as far as possible, be acquired rather than produced by those services, and

(v) be made available throughout Canada by the most cost-efficient means;

(s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,

(i) contribute significantly to the creation and presentation of Canadian programming, and

(ii) be responsive to the evolving demands of the public; and

(t) distribution undertakings

(i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

(iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and

(iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

[Further declaration]

(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

Application

[Binding on Her Majesty]

4. (1) This Act is binding on Her Majesty in right of Canada or a province.

[Application generally]

(2) This Act applies in respect of broadcasting undertakings carried on in whole or in part within Canada or on board

(*a*) any ship, vessel or aircraft that is

(i) registered or licensed under an Act of Parliament, or

(ii) owned by, or under the direction or control of, Her Majesty in right of Canada or a province;

(*b*) any spacecraft that is under the direction or control of

(i) Her Majesty in right of Canada or a province,

(ii) a citizen or resident of Canada, or

(iii) a corporation incorporated or resident in Canada; or

(*c*) any platform, rig, structure or formation that is affixed or attached to land situated in those submarine areas adjacent to the coast of Canada and extending throughout the natural prolongation of the land territory of Canada to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baselines from which the breadth of the territorial sea of Canada is measured, whichever is greater.

[For greater certainty]

(3) For greater certainty, this Act applies in respect of broadcasting undertakings whether or not they are carried on for profit or as part of, or in connection with, any other undertaking or activity.

[Idem]

(4) For greater certainty, this Act does not apply to any telecommunications common carrier, as defined in the Telecommunications Act, when acting solely in that capacity.

Part II
Objects and Powers of the Commission in Relation to Broadcasting

Objects

[Objects]

5. (1) Subject to this Act and the Radiocommunication Act and to any directions to the Commission issued by the Governor in Council under this Act, the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) and, in so doing, shall have regard to the regulatory policy set out in subsection (2).

[Regulatory policy]

(2) The Canadian broadcasting system should be regulated and supervised in a flexible manner that

(*a*) is readily adaptable to the different characteristics of English and French language broadcasting and to the different conditions under which broadcasting undertakings that provide English or French language programming operate;

(*b*) takes into account regional needs and concerns;

(*c*) is readily adaptable to scientific and technological change;

(*d*) facilitates the provision of broadcasting to Canadians;

(*e*) facilitates the provision of Canadian programs to Canadians;

(*f*) does not inhibit the development of information technologies and their application or the delivery of resultant services to Canadians; and (*g*) is sensitive to the administrative burden that, as a consequence of such regulation and supervision, may be imposed on persons carrying on broadcasting undertakings.

[Conflict]

(3) The Commission shall give primary consideration to the objectives of the broadcasting policy set out in subsection 3(1) if, in any particular matter before the Commission, a conflict arises between those objectives and the objectives of the regulatory policy set out in subsection (2).

(4) Where a broadcasting undertaking is subject to the Employment Equity Act, the powers granted to the Commission under this Act do not extend to the regulation or supervision of matters concerning employment equity in relation to that broadcasting undertaking.

[Policy guidelines and statements]

6. The Commission may from time to time issue guidelines and statements with respect to any matter within its jurisdiction under this Act, but no such guidelines or statements issued by the Commission are binding on the Commission.

[Policy directions]

7. (1) Subject to subsection (2) and section 8, the Governor in Council may, by order, issue to the Commission directions of general application on broad policy matters with respect to

(*a*) any of the objectives of the broadcasting policy set out in subsection 3(1); or

(*b*) any of the objectives of the regulatory policy set out in subsection 5(2).

[Exception]

(2) No order may be made under subsection (1) in respect of the issuance of a licence to a particular person or in respect of the amendment, renewal, suspension or revocation of a particular licence.

[Directions binding]

(3) An order made under subsection (1) is binding on the Commission beginning on the day on which the order comes into force and, subject to subsection (4), shall, if it so provides, apply with respect to any matter pending before the Commission on that day.

[Exception]

(4) No order made under subsection (1) may apply with respect to a licensing matter pending before the Commission where the period for the filing of interventions in the matter has expired unless that period expired more than one year before the coming into force of the order.

[Publication and tabling]

(5) A copy of each order made under subsection (1) shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

[Consultation]

(6) The Minister shall consult with the Commission before the Governor in Council makes an order under subsection (1).

[Procedure for issuance of policy directions]

8. (1) Where the Governor in Council proposes to make an order under section 7, the Minister shall cause the proposed order to be

(*a*) published by notice in the Canada Gazette, which notice shall invite interested persons to make representations to the Minister with respect to the proposed order; and

(*b*) laid before each House of Parliament.

[Referral to committee]

(2) Where a proposed order is laid before a House of Parliament pursuant to subsection (1), it shall stand referred to such committee thereof as the House considers appropriate to deal with the subject-matter of the order.

[Implementation of proposal]

(3) The Governor in Council may, after the expiration of forty sitting days of Parliament after a proposed order is laid before both Houses of Parliament in accordance with subsection (1), implement the proposal by making an order under section 7, either in the form proposed or revised in such manner as the Governor in Council deems advisable.

[Consultation]

(4) The Minister shall consult with the Commission before a proposed order is published or is laid before a House of Parliament under subsection (1).

[Definition of "sitting day of Parliament"]

(5) In this section, "sitting day of Parliament" means a day on which either House of Parliament sits.

General Powers

[Licences, etc.]

9. (1) Subject to this Part, the Commission may, in furtherance of its objects,

(a) establish classes of licences;

(b) issue licences for such terms not exceeding seven years and subject to such conditions related to the circumstances of the licensee

  (i) as the Commission deems appropriate for the implementation of the broadcasting policy set out in subsection 3(1), and

  (ii) in the case of licences issued to the Corporation, as the Commission deems consistent with the provision, through the Corporation, of the programming contemplated by paragraphs 3(1)(*l*) and (*m*);

(c) amend any condition of a licence on application of the licensee or, where five years have expired since the issuance or renewal of the licence, on the Commission's own motion;

(d) issue renewals of licences for such terms not exceeding seven years and subject to such conditions as comply with paragraph (*b*);

(e) suspend or revoke any licence;

(f) require any licensee to obtain the approval of the Commission before entering into any contract with a telecommunications common carrier for the distribution of programming directly to the public using the facilities of that common carrier;

(*g*) require any licensee who is authorized to carry on a distribution undertaking to give priority to the carriage of broadcasting; and

(*h*) require any licensee who is authorized to carry on a distribution undertaking to carry, on such terms and conditions as the Commission deems appropriate, programming services specified by the Commission.

[Restrictions reconditions]

(2) Notwithstanding subsections (1) and 28(3), no licence of a distribution undertaking may be made subject to a condition that requires the licensee to substitute replacement material for commercial messages carried in a broadcasting signal received by that licensee.

[Exception]

(3) Subsection (2) does not apply in respect of a condition of a licence renewed after October 4, 1987 where before that date the licensee was complying with such a condition.

[Exemptions]

(4) The Commission shall, by order, on such terms and conditions as it deems appropriate, exempt persons who carry on broadcasting undertakings of any class specified in the order from any or all of the requirements of this Part or of a regulation made under this Part where the Commission is satisfied that compliance with those requirements will not contribute in a material manner to the implementation of the broadcasting policy set out in subsection 3(1).

[Regulations generally]

10. (1) The Commission may, in furtherance of its objects, make regulations

(*a*) respecting the proportion of time that shall be devoted to the broadcasting of Canadian programs;

(*b*) prescribing what constitutes a Canadian program for the purposes of this Act;

(*c*) respecting standards of programs and the allocation of broadcasting time for the purpose of giving effect to the broadcasting policy set out in subsection 3(1);

(*d*) respecting the character of advertising and the amount of broadcasting time that may be devoted to advertising;

(*e*) respecting the proportion of time that may be devoted to the broadcasting of programs, including advertisements or announcements, of a partisan political character and the assignment of that time on an equitable basis to political parties and candidates;

(*f*) prescribing the conditions for the operation of programming undertakings as part of a network and for the broadcasting of network programs, and respecting the broadcasting times to be reserved for network programs by any such undertakings;

(*g*) respecting the carriage of any foreign or other programming services by distribution undertakings;

(*h*) for resolving, by way of mediation or otherwise, any disputes arising between programming undertakings and distribution undertakings concerning the carriage of programming originated by the programming undertakings;

(*i*) requiring licensees to submit to the Commission such information regarding their programs and financial affairs or otherwise relating to the conduct and management of their affairs as the regulations may specify;

(*j*) respecting the audit or examination of the records and books of account of licensees by the Commission or persons acting on behalf of the Commission; and

(*k*) respecting such other matters as it deems necessary for the furtherance of its objects.

[Application]

(2) A regulation made under this section may be made applicable to all persons holding licences or to all persons holding licences of one or more classes.

[Publication of proposed regulation]

(3) A copy of each regulation that the Commission proposes to make under this section shall be published in the Canada Gazette and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto.

[Regulations respecting licence fees]

11. (1) The Commission may make regulations

(*a*) with the approval of the Treasury Board, establishing schedules of fees to be paid by licensees of any class;

(*b*) providing for the establishment of classes of licensees for the purposes of paragraph (*a*);

(*c*) providing for the payment of any fees payable by a licensee, including the time and manner of payment;

(*d*) respecting the interest payable by a licensee in respect of any overdue fee; and

(*e*) respecting such other matters as it deems necessary for the purposes of this section.

[Criteria]

(2) Regulations made under paragraph (1)(*a*) may provide for fees to be calculated by reference to any criteria that the Commission deems appropriate, including by reference to

(*a*) the revenues of the licensees;

(*b*) the performance of the licensees in relation to objectives established by the Commission, including objectives for the broadcasting of Canadian programs; and

(*c*) the market served by the licensees.

[Exceptions]

(3) No regulations made under subsection (1) shall apply to the Corporation or to licensees carrying on programming undertaking on behalf of Her Majesty in right of a province.

[Debt due to Her Majesty]

(4) Fees payable by a licensee under this section and any interest thereon constitute a debt due to Her Majesty in right of Canada and may be recovered as such in any court of competent jurisdiction.

[Publication of proposed regulations]

(5) A copy of each regulation that the Commission proposes to make under this section shall be published in the Canada Gazette and a reasonable opportunity shall be given to licensees and other interested persons to make representations to the Commission with respect thereto.

[Inquiries]

12. (1) Where it appears to the Commission that

(*a*) any person has failed to do any act or thing that the person is required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part, or has done or is doing any act or thing in contravention of this Part or of any such regulation, licence, decision or order, or

(*b*) the circumstances may require the Commission to make any decision or order or to give any approval that it is authorized to make or give under this Part or under any regulation or order made under this Part, the Commission may inquire into, hear and determine the matter.

[Mandatory orders]

(2) The Commission may, by order, require any person to do, forthwith or within or at any time and in any manner specified by the Commission, any act or thing that the person is or may be required to do pursuant to this Part or to any regulation, licence, decision or order made or issued by the Commission under this Part and may, by order, forbid the doing or continuing of any act or thing that is contrary to this Part or to any such regulation, licence, decision or order.

[Referral to Commission]

(3) Where an inquiry under subsection (1) is heard by a panel established under subsection 20(1) and the panel issues an order pursuant to subsection (2) of this section, any person who is affected by the order may, within thirty days after the making thereof, apply to the Commission to reconsider any decision or finding made by the panel, and the Commission may rescind or vary any order or decision made by the panel or may rehear any matter before deciding it.

[Enforcement of mandatory orders]

13. (1) Any order made under subsection 12(2) may be made an order of the Federal Court or of any superior court of a province and is enforceable in the same manner as an order of the court.

[Procedure]

(2) To make an order under subsection 12(2) an order of a court, the usual practice and procedure of the court in such matters may be followed or, in lieu thereof, the Commission may file with the registrar of the court a certified copy of the order, and thereupon the order becomes an order of the court.

[Effect of variation or rescission]

(3) Where an order that has been made an order of a court is rescinded or varied by a subsequent order of the Commission, the order of the court shall be deemed to have been cancelled and the subsequent order may, in the same manner, be made an order of the court.

[Research]

14. (1) The Commission may undertake, sponsor, promote or assist in research relating to any matter within its jurisdiction under this Act and in so doing it shall, wherever appropriate, utilize technical, economic and statistical information and advice from the Corporation or departments or agencies of the Government of Canada.

[Review of technical matters]

(2) The Commission shall review and consider any technical matter relating to broadcasting referred to the Commission by the Minister and shall make recommendations to the Minister with respect thereto.

[Hearings and reports]

15. (1) The Commission shall, on request of the Governor in Council, hold hearings or make reports on any matter within the jurisdiction of the Commission under this Act.

[Consultation]

(2) The Minister shall consult with the Commission with regard to any request proposed to be made by the Governor in Council under subsection (1).

[Powers respecting hearings]

16. The Commission has, in respect of any hearing under this Part, with regard to the attendance, swearing and examination of witnesses at the hearing, the production and inspection of documents, the enforcement of its orders, the entry and inspection of property and other matters necessary or proper in relation to the hearing, all such powers, rights and privileges as are vested in a superior court of record.

[Authority re questions of fact or law]

17. The Commission has authority to determine questions of fact or law in relation to any matter within its jurisdiction under this Act.

Hearings and Procedure

[Where public hearing required]

18. (1) Except where otherwise provided, the Commission shall hold a public hearing in connection with

- (*a*) the issue of a licence, other than a licence to carry on a temporary network operation;
- (*b*) the suspension or revocation of a licence;
- (*c*) the establishing of any performance objectives for the purposes of paragraph 11(2)(*b*); and
- (*d*) the making of an order under subsection 12(2).

[Idem]

(2) The Commission shall hold a public hearing in connection with the amendment or renewal of a licence unless it is satisfied that such a hearing is not required in the public interest.

[Where public hearing in Commission's discretion]

(3) The Commission may hold a public hearing, make a report, issue any decision and give any approval in connection with any complaint or representation made to the Commission or in connection with any other matter within its jurisdiction under this Act if it is satisfied that it would be in the public interest to do so.

[Place of hearing]

(4) A public hearing under this section may be held at such place in Canada as the Chairperson of the Commission may designate.

[Notice of hearing]

19. The Commission shall cause notice of

- (*a*) any application received by it for the issue, amendment or renewal of a licence, other than a licence to carry on a temporary network operation,
- (*b*) any decision made by it to issue, amend or renew a licence, and

(c) any public hearing to be held by it under section 18 to be published in the Canada Gazette and in one or more newspapers of general circulation within any area affected or likely to be affected by the application, decision or matter to which the public hearing relates.

[Panels of Commission]

20. (1) The Chairperson of the Commission may establish panels, each consisting of not fewer than three members of the Commission, at least two of whom shall be full-time members, to deal with, hear and determine any matter on behalf of the Commission.

[Powers]

(2) A panel that is established under subsection (1) has and may exercise all the powers and may perform all the duties and functions of the Commission in relation to any matter before the panel.

[Decision]

(3) A decision of a majority of the members of a panel established under subsection (1) is a decision of the panel.

[Consultation]

(4) The members of a panel established under subsection (1) shall consult with the Commission, and may consult with any officer of the Commission, for the purpose of ensuring a consistency of interpretation of the broadcasting policy set out in subsection 3(1), the regulatory policy set out in subsection 5(2) and the regulations made by the Commission under sections 10 and 11.

[Rules]

21. The Commission may make rules

(a) respecting the procedure for making applications for licences, or for the amendment, renewal, suspension or revocation thereof, and for making representations and complaints to the Commission; and

(b) respecting the conduct of hearings and generally respecting the conduct of the business of the Commission in relation to those hearings.

Licences

[Conditions governing issue, amendment and renewal]

22. (1) No licence shall be issued, amended or renewed under this Part

- (*a*) if the issue, amendment or renewal of the licence is in contravention of a direction to the Commission issued by the Governor in Council under subsection 26(1); and
- (*b*) subject to subsection (2), unless the Minister of Industry certifies to the Commission that the applicant for the issue, amendment or renewal of the licence
  - (i) has satisfied the requirements of the Radiocommunication Act and the regulations made under that Act, and
  - (ii) has been or will be issued a broadcasting certificate with respect to the radio apparatus that the applicant would be entitled to operate under the licence.

[Exception]

(2) The requirement set out in paragraph (1)(b) does not apply in respect of radio apparatus, or any class thereof, prescribed under paragraph 6(1)(m) of the Radiocommunication Act.

[Suspension or revocation of broadcasting certificate]

(3) No licence is of any force or effect during any period when the broadcasting certificate issued under the Radiocommunication Act with respect to the radio apparatus that the holder of the licence is entitled to operate under that Act is suspended or revoked.

[Issue, etc., contravening this section]

(4) Any licence issued, amended or renewed in contravention of this section is of no force or effect.

[Consultation between Commission and Corporation]

23. (1) The Commission shall, at the request of the Corporation, consult with the Corporation with regard to any conditions that the Commission proposes to attach to any licence issued or to be issued to the Corporation.

[Reference to Minister]

(2) If, notwithstanding the consultation provided for in subsection (1), the Commission attaches any condition to a licence referred to in subsection (1) that the Corporation is satisfied would unreasonably impede the Corporation in providing the programming contemplated by paragraphs 3(1)(*l*) and (*m*), the Corporation may, within thirty days after the decision of the Commission, refer the condition to the Minister for consideration.

[Ministerial directive]

(3) Subject to subsection (4), the Minister may, within ninety days after a condition is referred to the Minister under subsection (2), issue to the Commission a written directive with respect to the condition and the Commission shall comply with any such directive issued by the Minister.

[Consultation]

(4) The Minister shall consult with the Commission and with the Corporation before issuing a directive under subsection (3).

[Publication and tabling of directive]

(5) A directive issued by the Minister under subsection (3) shall be published forthwith in the Canada Gazette and shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the directive is issued.

[Conditions governing suspension and revocation]

24. (1) No licence shall be suspended or revoked under this Part unless the licensee applies for or consents to the suspension or revocation or, in any other case, unless, after a public hearing in accordance with section 18, the Commission is satisfied that

(*a*) the licensee has contravened or failed to comply with any condition of the licence or with any order made under subsection 12(2) or any regulation made under this Part; or

(*b*) the licence was, at any time within the two years immediately preceding the date of publication in the Canada Gazette of the notice of the public hearing, held by a person to whom the licence could not have been issued at that time by virtue of a direction to the Commission issued by the Governor in Council under this Act.

[Licences of Corporation]

(2) No licence issued to the Corporation that is referred to in the schedule may be suspended or revoked under this Part except on application of or with the consent of the Corporation.

[Publication of decision]

(3) A copy of a decision of the Commission relating to the suspension or revocation of a licence, together with written reasons for the decision, shall, forthwith after the making of the decision, be forwarded by prepaid registered mail to all persons who were heard at or made any oral representations in connection with the hearing held under subsection (1), and a summary of the decision and of the reasons for the decision shall, at the same time, be published in the Canada Gazette and in one or more newspapers of general circulation within any area affected or likely to be affected by the decision.

[Report of alleged contravention or non-compliance by Corporation]

25. (1) Where the Commission is satisfied, after a public hearing on the matter, that the Corporation has contravened or failed to comply with any condition of a licence referred to in the schedule, any order made under subsection 12(2) or any regulation made under this Part, the Commission shall forward to the Minister a report setting out the circumstances of the alleged contravention or failure, the findings of the Commission and any observations or recommendations of the Commission in connection therewith.

[Report to be tabled]

(2) The Minister shall cause a copy of the report referred to in subsection (1) to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is received by the Minister.

General Powers of the Governor in Council

[Directions]

26. (1) The Governor in Council may, by order, issue directions to the Commission

(*a*) respecting the maximum number of channels or frequencies for the use of which licences may be issued within a geographical area designated in the order;

(*b*) respecting the reservation of channels or frequencies for the use of the Corporation or for any special purpose designated in the order;

(*c*) respecting the classes of applicants to whom licences may not be issued or to whom amendments or renewals thereof may not be granted; and

(*d*) prescribing the circumstances in which the Commission may issue licences to applicants that are agents of a province and are otherwise ineligible to hold a licence, and the conditions on which those licences may be issued.

[Idem]

(2) Where the Governor in Council deems the broadcast of any program to be of urgent importance to Canadians generally or to persons resident in any area of Canada, the Governor in Council may, by order, direct the Commission to issue a notice to licensees throughout Canada or throughout any area of Canada, of any class specified in the order, requiring the licensees to broadcast the program in accordance with the order, and licensees to whom any such notice is addressed shall comply with the notice.

[Publication and tabling]

(3) An order made under subsection (1) or (2) shall be published forthwith in the Canada Gazette and a copy thereof shall be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the making of the order.

[Consultation]

(4) The Minister shall consult with the Commission with regard to any order proposed to be made by the Governor in Council under subsection (1).

[Directions re Free Trade Agreement]

27. (1) The Governor in Council may, either on the recommendation of the Minister made at the request of the Commission or on the Governor in Council's own motion, issue directions of general application respecting the manner in which the Commission shall apply or interpret paragraph 3 of Article 2006 of the Agreement.

[Effect of directions]

(2) A direction issued under subsection (1) is binding on the Commission from the time it comes into force and, unless otherwise provided therein, applies in respect of matters pending before the Commission at that time.

[Request of Commission]

(3) The Commission may, in order to request the issuance of a direction under subsection (1), suspend the determination of any matter of which it is seised.

[Definition of "Agreement"]

(4) In this section, "Agreement" has the same meaning as in the Canada-United States Free Trade Agreement Implementation Act.

[Setting aside or referring decisions back to Commission]

28. (1) Where the Commission makes a decision to issue, amend or renew a licence, the Governor in Council may, within ninety days after the date of the decision, on petition in writing of any person received within forty-five days after that date or on the Governor in Council's own motion, by order, set aside the decision or refer the decision back to the Commission for reconsideration and hearing of the matter by the Commission, if the Governor in Council is satisfied that the decision derogates from the attainment of the objectives of the broadcasting policy set out in subsection 3(1).

[Order on reference back]

(2) An order made under subsection (1) that refers a decision back to the Commission for reconsideration and hearing shall set out the details of any matter that, in the opinion of the Governor in Council, may be material to the reconsideration and hearing.

[Powers on reference back]

(3) Where a decision is referred back to the Commission under this section, the Commission shall reconsider the matter and, after a hearing as provided for by subsection (1), may

(*a*) rescind the decision or the issue, amendment or renewal of the licence;

(*b*) rescind the issue of the licence and issue a licence on the same or different conditions to another person; or

(*c*) confirm, either with or without change, variation or alteration, the decision or the issue, amendment or renewal of the licence.

[Setting aside after confirmation]

(4) Where, pursuant to paragraph (3)(c), the Commission confirms a decision or the issue, amendment or renewal of a licence, the Governor in Council may, within sixty days after the confirmation, on petition in writing of any person received within thirty days after that date or on the Governor in Council's own motion, by order, set aside the decision or the issue, amendment or renewal, if the Governor in Council is satisfied as to any of the matters referred to in subsection (1).

[Reasons]

(5) An order made under subsection (4) to set aside a decision or the issue, amendment or renewal of a licence shall set out the reasons of the Governor in Council therefor.

[Filing of petitions]

29. (1) Every person who petitions the Governor in Council under subsection 28(1) or (4) shall at the same time send a copy of the petition to the Commission.

[Notice]

(2) On receipt of a petition under subsection (1), the Commission shall forward a copy of the petition by prepaid registered mail to all persons who were heard at or made any oral representation in connection with the hearing held in the matter to which the petition relates.

[Register]

(3) The Commission shall establish and maintain a public register in which shall be kept a copy of each petition received by the Commission under subsection 28(1) or (4).

[Amendment of schedule]

30. The Governor in Council may, on the recommendation of the Minister made on the request of the Commission and with the consent of the Corporation, amend the schedule.

Decisions and Orders

[Decisions and orders final]

31. (1) Except as provided in this Part, every decision and order of the Commission is final and conclusive.

[Appeal to Federal Court of Appeal]

(2) An appeal lies from a decision or order of the Commission to the Federal Court of Appeal on a question of law or a question of jurisdiction if leave therefor is obtained from that Court on application made within one month after the making of the decision or order sought to be appealed from or within such further time as that Court under special circumstances allows.

[Entry of appeal]

(3) No appeal lies after leave therefor has been obtained under subsection (2) unless it is entered in the Federal Court of Appeal within sixty days after the making of the order granting leave to appeal.

[Document deemed decision or order]

(4) Any document issued by the Commission in the form of a decision or order shall, if it relates to the issue, amendment, renewal, revocation ,or suspension of a licence, be deemed for the purposes of this section to be a decision or order of the Commission.

Offences

[Broadcasting without or contrary to licence]

32. (1) Every person who, not being exempt from the requirement to hold a licence, carries on a broadcasting undertaking without a licence therefor is guilty of an offence punishable on summary conviction and is liable

(*a*) in the case of an individual, to a fine not exceeding twenty thousand dollars for each day that the offence continues; or

(*b*) in the case of a corporation, to a fine not exceeding two hundred thousand dollars for each day that the offence continues.

[Contravention of regulation or order]

(2) Every person who contravenes or fails to comply with any regulation or order made under this Part is guilty of an offence punishable on summary conviction and is liable

(*a*) in the case of an individual, to a fine not exceeding twenty-five thousand dollars for a first offence and not exceeding fifty thousand dollars for each subsequent offence; or

(*b*) in the case of a corporation, to a fine not exceeding two hundred and fifty thousand dollars for a first offence and not exceeding five hundred thousand dollars for each subsequent offence.

[Contravention of conditions of licence]

33. Every person who contravenes or fails to comply with any condition of a licence issued to the person is guilty of an offence punishable on summary conviction.

[Limitation]

34. Proceedings for an offence under subsection 32(2) or section 33, may be instituted within, but not after, two years after the time when the subject-matter of the proceedings arose.

Part III
Canadian Broadcasting Corporation

Interpretation

[Definitions]

35. (1) In this Part,

["auditor" « *vérificateur* »]
"auditor" means the auditor of the Corporation;

["Board" « *conseil...* »]
"Board" means the Board of Directors of the Corporation;

["Chairperson" « *président du conseil* »]
"Chairperson" means the Chairperson of the Board;

["director" « *administrateur* »]
"director" means a director of the Corporation;

["President" « *président-directeur général* »]
"President" means the President of the Corporation;

["wholly-owned subsidiary" « *filiale à cent pour cent* »]
"wholly-owned subsidiary" has the same meaning as in Part X of the Financial Administration Act.

[Interpretation]

(2) This Part shall be interpreted and applied so as to protect and enhance the freedom of expression and the journalistic, creative and programming independence enjoyed by the Corporation in the pursuit of its objects and in the exercise of its powers.

Continuation of Corporation

[Corporation continued]

36. (1) The corporation known as the Canadian Broadcasting Corporation is hereby continued and shall consist of those directors who from time to time compose the Board.

[Board of Directors]

(2) There shall be a Board of Directors of the Corporation consisting of twelve directors, including the Chairperson and the President, to be appointed by the Governor in Council.

[Tenure]

(3) A director shall be appointed to hold office during good behaviour for a term not exceeding five years and may be removed at any time by the Governor in Council for cause.

[Reappointment]

(4) Subject to section 38, the Chairperson and the President are eligible for reappointment on the expiration of any term of office but any other director who has served two consecutive terms is not, during the twelve months following the completion of the second term, eligible for appointment, except as Chairperson or President.

[Continuation in office]

(5) Notwithstanding subsections (3) and (4), if a director is not appointed to take office on the expiration of the term of office of an incumbent director, the incumbent director continues in office until a successor is appointed.

[Oath of office]

37. Every director shall, before entering on the director's duties, take and subscribe, before the Clerk of the Privy Council, an oath or solemn affirmation, which shall be filed in the office of the Clerk, in the following form:

I, ..., do solemnly swear (or affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of .... (Add, in the case where an oath is taken, "So help me God".)

[Outside interests of Directors]

38. (1) A person is not eligible to be appointed or to continue as a director if the person is not a Canadian citizen who is ordinarily resident in Canada or if, directly or indirectly, as owner, shareholder, director, officer, partner or otherwise, the person

(*a*) is engaged in the operation of a broadcasting undertaking;

(*b*) has any pecuniary or proprietary interest in a broadcasting undertaking; or

(*c*) is principally engaged in the production or distribution of program material that is primarily intended for use by a broadcasting undertaking.

[Disposing of interest]

(2) A director in whom any interest prohibited by subsection (1) vests by will or succession for the director's own benefit shall, within three months thereafter, absolutely dispose of that interest.

[Responsibility of directors]

39. Subject to this Part, the Board is responsible for the management of the businesses, activities and other affairs of the Corporation.

[Accountability of Corporation to Parliament]

40. The Corporation is ultimately accountable, through the Minister, to Parliament for the conduct of its affairs.

Chairperson

[Powers, duties and functions]

41. (1) The Chairperson shall preside at meetings of the Board and may exercise such powers and shall perform such other duties and functions as are assigned to the Chairperson by the by-laws of the Corporation.

[Part-time]

(2) The Chairperson shall perform the duties and functions of the office on a part-time basis.

[Absence, incapacity or vacancy of office]

(3) If the Chairperson is absent or incapacitated or if the office of Chairperson is vacant, the President shall act as Chairperson, and if both are absent or incapacitated or if both those offices are vacant, the Board may authorize a director to act as Chairperson, but no person so authorized by the Board has authority to act as Chairperson for a period exceeding sixty days without the approval of the Governor in Council.

President

[Powers, duties and functions]

42. (1) The President is the chief executive officer of the Corporation and has supervision over and direction of the work and staff of the Corporation and may exercise such powers and shall perform such other duties and functions as are assigned to the President by the by-laws of the Corporation.

[Full-time]

(2) The President shall perform the duties and functions of the office on a full-time basis.

[Absence, incapacity or vacancy of office]

(3) If the President is absent or incapacitated or if the office of President is vacant, the Board may authorize an officer of the Corporation to act as President, but no person so authorized by the Board has authority to act as President for a period exceeding sixty days without the approval of the Governor in Council.

Remuneration

[Chairperson's and President's remuneration]

43. (1) The Chairperson and the President shall be paid by the Corporation remuneration at the rate fixed by the Governor in Council.

[Fees of other directors]

(2) Each director, other than the Chairperson and the President, shall be paid by the Corporation such fees for attendance at meetings of the Board or any committee of directors as are fixed by the by-laws of the Corporation.

[Expenses]

(3) Each director is entitled to be paid by the Corporation such travel and living expenses incurred by the director in the performance of the duties of that director as are fixed by the by-laws of the Corporation.

Staff

[Employment of staff]

44. (1) The Corporation may, on its own behalf, employ such officers and employees as it considers necessary for the conduct of its business.

[Terms, etc., of employment]

(2) The officers and employees employed by the Corporation under subsection (1) shall, subject to any by-laws made under section 51, be employed on such terms and conditions and at such rates of remuneration as the Board deems fit.

[Not servants of Her Majesty]

(3) The officers and employees employed by the Corporation under subsection (1) are not officers or servants of Her Majesty.

Standing Committees

[English and French language broadcasting committees]

45. (1) The Board shall establish a standing committee of directors on English language broadcasting and a standing committee of directors on French language broadcasting, each consisting of the Chairperson, the President and such other directors as the Board may appoint.

[Chairperson or President shall preside]

(2) The Chairperson, or in the absence of the Chairperson, the President, shall preside at meetings of each standing committee established pursuant to subsection (1).

[Absence of Chairperson and President]

(3) In respect of each standing committee established pursuant to subsection (1), the Chairperson shall designate one of the directors to preside at meetings thereof in the event of the absence of both the Chairperson and the President.

[Duties of committees]

(4) The standing committee on English language broadcasting shall perform such duties in relation to English language broadcasting, and the standing committee on French language broadcasting shall perform such duties in relation to French language broadcasting, as are delegated to the committee by the by-laws of the Corporation.

Objects and Powers

[Objects and powers]

46. (1) The Corporation is established for the purpose of providing the programming contemplated by paragraphs 3(1)(l) and (m), in accordance with the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, and for that purpose the Corporation may

(*a*) establish, equip, maintain and operate broadcasting undertakings;

(*b*) make operating agreements with licensees for the broadcasting of programs;

(*c*) originate programs, secure programs from within or outside Canada by purchase, exchange or otherwise and make arrangements necessary for their transmission;

(*d*) make contracts with any person, within or outside Canada, in connection with the production or presentation of programs originated or secured by the Corporation;

(*e*) make contracts with any person, within or outside Canada, for performances in connection with the programs of the Corporation;

(*f*) with the approval of the Governor in Council, make contracts with any person for the provision by the Corporation of consulting or engineering services outside Canada;

(*g*) with the approval of the Governor in Council, distribute or market outside Canada programming services originated by the Corporation;

(*h*) with the approval of the Minister, act as agent for or on behalf of any person in providing programming to any part of Canada not served by any other licensee;

(*i*) collect news relating to current events in any part of the world and establish and subscribe to news agencies;

(*j*) publish, distribute and preserve, whether for a consideration or otherwise, such audio-visual material, papers, periodicals and other literary matter as may seem conducive to the attainment of the objects of the Corporation;

(*k*) produce, distribute and sell such consumer products as may seem conducive to the attainment of the objects of the Corporation;

(*l*) acquire copyrights and trade-marks;

(*m*) acquire and use any patent, patent rights, licences or concessions that the Board considers useful for the purposes of the Corporation;

(*n*) make arrangements or agreements with any organization for the use of any rights, privileges or concessions that the Board considers useful for the purposes of the Corporation;

(*o*) acquire broadcasting undertakings either by lease or by purchase;

(*p*) make arrangements or agreements with any organization for the provision of broadcasting services;

(*q*) subject to the approval of the Governor in Council, acquire, ,hold and dispose of shares of the capital stock of any company or corporation that is authorized to carry on any business incidental or conducive to the attainment of the objects of the Corporation; and

(*r*) do all such other things as the Board deems incidental or conducive to the attainment of the objects of the Corporation.

[International service]

(2) The Corporation shall, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, provide an international service in accordance with such directions as the Governor in Council may issue.

[Power to act as agent]

(3) The Corporation may, within the conditions of any licence or licences issued to it by the Commission and subject to any applicable regulations of the Commission, act as an agent of Her Majesty in right of Canada or a province in respect of any broadcasting operations that it may be directed by the Governor in Council to carry out.

[Extension of services]

(4) In planning extensions of broadcasting services, the Corporation shall have regard to the principles and purposes of the Official Languages Act.

[Independence]

(5) The Corporation shall, in the pursuit of its objects and in the exercise of its powers, enjoy freedom of expression and journalistic, creative and programming independence.

[Debt obligations]

46.1 (1) The Corporation may, with the approval of the Minister of Finance, borrow money by any means, including the issuance and sale of bonds, debenture, notes and any other evidence of indebtness of the Corporation.

[Loans to the Corporation]

(2) At the request of the Corporation, the Minister of Finance may, out of the Consolidated Revenue Fund, lend money to the Corporation on such terms and conditions as that Minister may fix.

[Total indebtedness]

(3) The total indebtedness outstanding in respect of borrowings under subsections (1) and (2) shall not exceed

(*a*) $25,000 000; or

(*b*) such greater amount as may be authorized for the purpose of this subsection by Parliament under an appropriation Act.

Agent of Her Majesty

[Corporation an agent of Her Majesty]

47. (1) Except as provided in subsections 44(1) and 46(2), the Corporation is, for all purposes of this Act, an agent of Her Majesty, and it may exercise its powers under this Act only as an agent of Her Majesty.

[Contracts]

(2) The Corporation may, on behalf of Her Majesty, enter into contracts in the name of Her Majesty or in the name of the Corporation.

[Property]

(3) Property acquired by the Corporation is the property of Her Majesty and title thereto may be vested in the name of Her Majesty or in the name of the Corporation.

[Proceedings]

(4) Actions, suits or other legal proceedings in respect of any right or obligation acquired or incurred by the Corporation on behalf of Her Majesty, whether in its name or in the name of Her Majesty, may be brought or taken by or against the Corporation in the name of the Corporation in any court that would have jurisdiction if the Corporation were not an agent of Her Majesty.

[Acquisition and disposition of property]

48. (1) Subject to subsection (2), the Corporation may purchase, lease or otherwise acquire any real or personal property that the Corporation deems necessary or convenient for carrying out its objects and may sell, lease or otherwise dispose of all or any part of any property acquired by it.

[Restriction]

(2) The Corporation shall not, without the approval of the Governor in Council, enter into

(*a*) any transaction for the acquisition of any real property or the disposition of any real or personal property, other than program material or rights therein, for a consideration in excess of four million dollars or such greater amount as the Governor in Council may by order prescribe; or

(*b*) a lease or other agreement for the use or occupation of real property involving an expenditure in excess of four million dollars or such greater amount as the Governor in Council may by order prescribe.

[Retaining proceeds]

(3) Subject to subsection (4), the Corporation may retain and use all of the proceeds of any transaction for the disposition of real or personal property.

[Idem]

(4) In the case of a transaction for the disposition of real or personal property requiring the approval of the Governor in Council under subsection (2), the Corporation may retain and use all or any part of the proceeds therefrom unless otherwise directed by the Governor in Council.

[Expropriation]

49. (1) Where, in the opinion of the Corporation, the taking or acquisition of any land or interest therein by the Corporation without the consent of the owner is required for the purpose of carrying out its objects, the Corporation shall so advise the appropriate Minister in relation to Part I of the Expropriation Act.

[Application of Expropriation Act]

(2) For the purposes of the Expropriation Act, any land or interest therein that, in the opinion of the Minister referred to in subsection (1), is required for the purpose of carrying out the objects of

the Corporation shall be deemed to be land or an interest therein that, in the opinion of the Minister, is required for a public work or other public purpose and, in relation thereto, a reference to the Crown in that Act shall be construed as a reference to the Corporation.

Head Office and Meetings

[Head office]

50. (1) The head office of the Corporation shall be in the National Capital Region as described in the schedule to the National Capital Act or at such other place in Canada as the Governor in Council may specify.

[Meetings]

(2) The Board shall meet at least six times in each year.

[Telephone conferences]

(3) A director may, subject to the by-laws of the Corporation, participate in a meeting of the Board or a committee of directors by means of such telephone or other communication facilities as permit all persons participating in the meeting to hear each other, and a director who participates in such a meeting by those means is deemed for the purposes of this Part to be present at the meeting.

By-laws

[By-laws]

51. (1) The Board may make by-laws

(*a*) respecting the calling of meetings of the Board;

(*b*) respecting the conduct of business at meetings of the Board, the establishment of special and standing committees of directors, the delegation of duties to special and standing committees of directors, including the committees referred to in section 45, and the fixing of quorums for meetings thereof;

(*c*) fixing the fees to be paid to directors, other than the Chairperson and the President, for attendance at meetings of the Board or any committee of directors, and the travel and living expenses to be paid to directors;

(*d*) respecting the duties and conduct of the directors, officers and employees of the Corporation and the terms and conditions of employment and of termination of employment of officers and employees of the Corporation, including the payment of any gratuity to those officers and employees or any one or more of them, whether by way of retirement allowance or otherwise;

(*e*) respecting the establishment, management and administration of a pension fund for the directors, officers and employees of the Corporation and their dependants, the contributions thereto to be made by the Corporation and the investment of the pension fund moneys thereof; and

(*f*) generally for the conduct and management of the affairs of the Corporation. Certain by-laws subject to Minister's approval

(2) No by-law made under paragraph (1)(c) or (e), and no by-law made under paragraph (1)(d) that provides for the payment of any gratuity referred to in that paragraph, has any effect unless it is approved by the Minister.

Financial Provisions

[Independence of the Corporation]

52. (1) Nothing in sections 53 to 70 shall be interpreted or applied so as to limit the freedom of expression or the journalistic, creative or programming independence enjoyed by the Corporation in the pursuit of its objects and in the exercise of its powers.

[Idem]

(2) Without limiting the generality of subsection (1), and notwithstanding sections 53 to 70 or any regulation made under any of those sections, the Corporation is not required to

(*a*) submit to the Treasury Board or to the Minister or the Minister of Finance any information the provision of which could reasonably be expected to compromise or constrain the journalistic, creative or programming independence of the Corporation; or

(*b*) include in any corporate plan or summary thereof submitted to the Minister pursuant to section 54 or 55 any information the provision of which could reasonably be expected to limit the ability of the Corporation to exercise its journalistic, creative or programming independence.

52.1 Notwithstanding the Financial Administration Act, Part VII of that Act does not apply to a debt incurred by the Corporation.

[Financial year]

53. The financial year of the Corporation is the period beginning on April 1 in one year and ending on March 31 in the next year, unless the Governor in Council otherwise directs.

[Corporate plan]

54. (1) The Corporation shall annually submit a corporate plan to the Minister.

[Scope of corporate plan]

(2) The corporate plan of the Corporation shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any.

[Contents of corporate plan]

(3) The corporate plan of the Corporation shall include

(*a*) a statement of

(i) the objects for which the Corporation is incorporated, as set out in this Act,

(ii) the Corporation's objectives for the next five years and for each year in that period and the strategy the Corporation intends to employ to achieve them, and

(iii) the Corporation's expected performance for the year in which the plan is submitted as compared to its objectives for that year, as set out in the last corporate plan;

(*b*) the capital budget of the Corporation for the next following financial year of the Corporation;

(*c*) an operating budget for the next following financial year of the Corporation; and

(*d*) where the corporation intends to borrow money in the next financial year, a general indication of the borrowing plans and strategies of the Corporation for that year.

[Approval of Minister of Finance]

(3.1) Where the Corporation includes a general indication of its plans to borrow money in its corporate plan, the Corporation shall submit that part of its corporate plan to the Minister of Finance for that Minister's approval.

[Capital budgets]

(4) The Corporation shall submit the capital budget to the Minister in a corporate plan pursuant to paragraph (3)(*b*) for the approval of the Treasury Board.

[Notification of business activity]

(5) Where the Corporation or a wholly-owned subsidiary of the Corporation proposes to carry out a substantial change to business activities in any period in a manner that is not consistent with the last corporate plan of the Corporation in respect of that period, the Corporation shall forthwith notify the Minister in writing of the inconsistency in the manner of carrying on the business activity.

[Scope of budgets]

(6) The budgets of the Corporation referred to in paragraphs (3)(*b*) and (*c*) shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any.

[Form of budgets]

(7) The budgets of the Corporation referred to in paragraphs (3)(*b*) and (*c*) shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any.

[Approval of multi-year items]

(8) The Treasury Board may approve any item in a capital budget submitted pursuant to paragraph (3)(*b*) for any financial year or years following the financial year for which the budget is submitted.

[Summary of plan]

55. (1) The Corporation shall submit to the Minister, in respect of each financial year, a summary of the corporate plan submitted pursuant to section 54 that summarizes the information referred to in subsection 54(3), modified so as to be based on the financial resources proposed to be allocated

to the Corporation as set out in the Estimates for that financial year that have been tabled in the House of Commons.

[Scope of summary]

(2) A summary shall encompass all the businesses and activities, including investments, of the Corporation and its wholly-owned subsidiaries, if any, and shall set out the major business decisions taken with respect thereto.

[Form of summary]

(3) A summary shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any.

[Tabling in Parliament]

(4) The Minister shall cause a copy of every summary received pursuant to this section to be laid before each House of Parliament.

[Reference to committee]

(5) A summary laid before a House of Parliament pursuant to subsection (4) stands permanently referred to such committee of that House or if both Houses of Parliament as may be designated or established to review matters relating to the business and activities of the Corporation.

[Regulations]

56. The Treasury Board may make regulations prescribing the form in which corporate plans and summaries required pursuant to sections 54 and 55 shall be prepared, the information to be included therein, the information to accompany corporate plans and the time at, before or within which they are to be submitted and summaries are to be laid before each House of Parliament.

[Bank accounts]

57. (1) The Corporation shall maintain in its own name one or more accounts with

(*a*) any member of the Canadian Payments Association;

(*b*) any local Cooperative Credit Society that is a member of a Central Cooperative Credit Society having membership in the Canadian Payments Association; and

(c) subject to the approval of the Minister of Finance, any financial institution outside Canada.

[Administration of Corporation funds]

(2) All money received by the Corporation through the conduct of its operations or otherwise shall be deposited to the credit of the accounts established pursuant to subsection (1) and shall be administered by the Corporation exclusively in the exercise of its powers and the performance of its duties and functions.

[Investments]

(3) The Corporation may invest any money administered by it in bonds or other securities of, or guaranteed by, the Government of Canada.

[Proprietor's Equity Account]

(4) The Corporation shall, in its books of account, establish a Proprietor's Equity Account and shall credit thereto the amount of all money paid to the Corporation for capital purposes out of parliamentary appropriations.

[Receiver General account]

58. (1) The Corporation shall, if so directed by the Minister of Finance with the concurrence of the Minister, and may, if the Minister of Finance and the Minister approve, pay or cause to be paid all or any part of the money of the Corporation or of a wholly-owned subsidiary of the Corporation to the Receiver General to be paid into the Consolidated Revenue Fund and credited to a special account in the accounts of Canada in the name of the Corporation or subsidiary, and the Receiver General, subject to such terms and conditions as the Minister of Finance may prescribe, may pay out, for the purposes of the Corporation or subsidiary, or repay to the Corporation or subsidiary, all or any part of the money credited to the special account.

[Interest]

(2) Interest may be paid in respect of money credited to a special account pursuant to subsection (1), in accordance with and at rates fixed by the Minister of Finance with the approval of the Governor in Council.

[Payment over surplus money]

59. Subject to any other Act of Parliament, where the Minister and the Minister of Finance, with the approval of the Governor in Council, so direct, the Corporation shall pay or cause to be paid to the Receiver General so much of the money of the Corporation or of a wholly-owned subsidiary of the Corporation as those Ministers consider to be in excess of the amount that is required for the purposes of the Corporation or subsidiary, and any money so paid may be applied toward the discharge of any obligation of the Corporation or subsidiary to the Crown or may be applied as revenues of Canada.

[Books and systems]

60. (1) The Corporation shall cause

(*a*) books of account and records in relation thereto to be kept, and

(*b*) financial and management control and information systems and management practices to be maintained, in respect of itself and each of its wholly-owned subsidiaries, if any.

[Idem]

(2) The books of account, records, systems and practices referred to in subsection (1) shall be kept and maintained in such manner as will provide reasonable assurance that

(*a*) the assets of the Corporation and of each subsidiary are safeguarded and controlled;

(*b*) the transactions of the Corporation and of each subsidiary are in accordance with this Part and the by-laws of the Corporation or subsidiary and, in the case of a subsidiary of the Corporation, its charter or any other document by or in accordance with which it is established; and

(*c*) the financial, human and physical resources of the Corporation and of each subsidiary are managed economically and efficiently and the operations of the Corporation and of each subsidiary are carried out effectively.

[Internal audit]

(3) The Corporation shall cause internal audits to be conducted in respect of itself and each of its wholly-owned subsidiaries, if any, to assess compliance with subsections (1) and (2).

[Financial statements]

(4) The Corporation shall cause financial statements to be prepared annually in respect of itself and its wholly-owned subsidiaries, if any, in accordance with generally accepted accounting principles, as supplemented or augmented by regulations made under subsection (6).

[Form of financial statements]

(5) The financial statements of the Corporation and of a wholly-owned subsidiary shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation or subsidiary.

[Regulations]

(6) The Treasury Board may, for the purposes of subsection (4), make regulations respecting financial statements of the Corporation, but those regulations shall only supplement or augment generally accepted accounting principles.

[Reports to Minister]

(7) The Board shall make to the Minister such reports of the financial affairs of the Corporation as the Minister requires.

[Auditor of the Corporation]

61. The Auditor General of Canada is the auditor of the Corporation.

[Annual auditor's report]

62. (1) The Corporation shall cause an annual auditor's report to be prepared in respect of itself and its wholly-owned subsidiaries, if any, in accordance with the regulations, on the accounts and financial statements of the Corporation and of each subsidiary, and the report shall be made to the Board and to the Minister.

[Contents]

(2) A report prepared pursuant to subsection (1) shall

(*a*) include separate statements indicating whether, in the auditor's opinion,

(i) the financial statements are presented fairly in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year,

(ii) any quantitative information in the Corporation's annual report in respect of which the Board has requested the auditor's opinion is accurate in all material respects and, if applicable, was prepared on a basis consistent with that of the preceding year, and

(iii) the transactions of the Corporation and of each subsidiary that have come to the auditor's notice in the course of the examination for the report were in accordance with this Part and the by-laws of the Corporation or subsidiary; and

(*b*) call attention to any other matter falling within the scope of the examination for the report that, in the opinion of the auditor, should be brought to the attention of Parliament.

[Regulations]

(3) The Treasury Board may make regulations prescribing the form and manner in which the report referred to in subsection (1) is to be prepared.

[Other reports]

(4) The auditor shall prepare such other reports respecting the Corporation or any wholly-owned subsidiary of the Corporation as the Governor in Council may require.

[Examination]

(5) The auditor shall make such examination as the auditor considers necessary to enable the auditor to prepare a report pursuant to subsection (1) or (3).

[Reliance on internal audit]

(6) The auditor shall, to the extent that the auditor considers practicable, rely on any internal audit of the Corporation that is conducted pursuant to subsection 60(3).

[Errors and omissions]

63. (1) A director or officer of the Corporation shall forthwith notify the auditor and the audit committee of the Corporation established under subsection 69(1) of any error or omission of which the director or officer becomes aware in a financial statement on which the auditor has reported or in a report prepared by the auditor pursuant to subsection 62(1).

[Idem]

(2) Where the auditor is notified or becomes aware of any error or omission in a financial statement on which the auditor has reported or in a report prepared by the auditor pursuant to subsection 62(1) and is of the opinion that the error or omission is material, the auditor shall forthwith notify each director of the error or omission.

[Correction]

(3) Where the auditor notifies the directors of an error or omission in a financial statement or report pursuant to subsection (2), the Corporation shall prepare a revised financial statement or the auditor shall issue a correction to the report, as the case may be, and a copy thereof shall be given to the Minister.

[Special examination]

64. (1) The Corporation shall cause a special examination to be carried out by the auditor in respect of itself and its wholly-owned subsidiaries, if any, to determine if the systems and practices referred to in paragraph 60(1)(b) were, in the period under examination, maintained in a manner that provided reasonable assurance that

(*a*) the assets of the Corporation and of each subsidiary were safeguarded and controlled; and

(*b*) the financial, human and physical resources of the Corporation and of each subsidiary were managed economically and efficiently, and the operations of the Corporation and of each subsidiary were carried out effectively.

[Time for examination]

(2) A special examination shall be carried out at least once every five years and at such additional times as the Governor in Council, the Minister or the Board may require.

[Plan]

(3) Before the auditor begins a special examination, the auditor shall survey the systems and practices of the Corporation to be examined and submit a plan for the examination, including a statement of the criteria to be applied in the examination, to the audit committee of the Corporation.

[Resolution of disagreements]

(4) Any disagreement between the auditor and the audit committee or the Board over a plan referred to in subsection (3) may be resolved

(*a*) in the case of the Corporation, by the Minister; and

(*b*) in the case of a wholly-owned subsidiary, by the Corporation.

[Reliance on internal audit]

(5) The auditor shall, to the extent considered practicable, rely on any internal audit of the Corporation conducted pursuant to subsection 60(3).

[Report]

(6) The auditor shall, on completion of the special examination, submit a report on the findings of the auditor to the Board.

[Contents]

(7) The report referred to in subsection (6) shall include

(*a*) a statement whether in the auditor's opinion, with respect to the criteria established pursuant to subsection (3), there is reasonable assurance that there are no significant deficiencies in the systems and practices examined; and

(*b*) a statement of the extent to which the auditor relied on internal audits.

[Special report to Minister]

(8) Where the auditor is of the opinion that the report referred to in subsection (6) contains information that should be brought to the attention of the Minister, the auditor shall, after consultation with the Board, report that information to the Minister and furnish the directors with a copy of the report.

[Idem]

(9) Where the auditor is of the opinion that the report referred to in subsection (6) contains information that should be brought to the attention of Parliament, the auditor shall, after

consultation with the Minister and the Board, prepare a report thereon for inclusion in the next annual report of the Corporation and furnish the Board and the Minister with copies of the report.

[Right to information]

65. (1) On the demand of the auditor, the present or former directors, officers, employees or agents of the Corporation shall furnish the auditor with such

- (*a*) information and explanations, and
- (*b*) access to records, documents, books, accounts and vouchers of the Corporation or any of its subsidiaries as the auditor considers necessary to enable the auditor to prepare any report required by this Part and that the directors, officers, employees or agents are reasonably able to furnish.

[Idem]

(2) On the demand of the auditor, the Board shall

- (*a*) obtain from the present or former directors, officers, employees or agents of any subsidiary of the Corporation such information and explanations as the auditor considers necessary to enable the auditor to prepare any report required by this Part and that the present or former directors, officers, employees or agents are reasonably able to furnish; and
- (*b*) furnish the information and explanations so obtained to the auditor.

[Restriction]

66. Nothing in this Part shall be construed as authorizing the auditor to express any opinion on the merits of matters of policy, including the merits of

- (a) the objects for which the Corporation is incorporated, or the restrictions on the businesses or activities that it may carry on;
- (b) the objectives of the Corporation; and
- (c) any business or policy decision of the Corporation or of the Government of Canada.

[Qualified privilege]

67. Any oral or written statement or report made under this Part by the auditor has qualified privilege.

[Cost of audit and examinations]

68. The costs incurred by the auditor in preparing any report under subsection 62(1) or section 64 shall be disclosed in the next annual report of the Auditor General of Canada and be paid out of the moneys appropriated for the office of the Auditor General of Canada.

[Audit committee]

69. (1) The Corporation shall establish an audit committee composed of not fewer than three directors.

[Duties]

(2) The audit committee shall

(*a*) review and advise the Board with respect to the financial statements that are to be included in the annual report of the Corporation;

(*b*) oversee any internal audit of the Corporation that is conducted pursuant to subsection 60(3);

(*c*) review and advise the Board with respect to the annual auditor's report of the Corporation referred to in subsection 62(1);

(*d*) where the Corporation is undergoing a special examination, review and advise the Board with respect to the plan and reports referred to in section 64; and

(*e*) perform such other functions as are assigned to it by the Board.

[Auditor's attendance]

(3) The auditor is entitled to receive notice of every meeting of the audit committee and to attend and be heard at each meeting and, if so requested by a member of the audit committee, the auditor shall attend any or every meeting of the committee.

[Calling meeting]

(4) The auditor or a member of the audit committee may call a meeting of the committee.

[Report on wholly-owned subsidiaries]

70. The Corporation shall forthwith notify the Minister and the President of the Treasury Board of the name of any corporation that becomes or ceases to be a wholly-owned subsidiary of the Corporation. Report to Parliament

[Annual report]

71. (1) The Corporation shall, as soon as possible after, but in any case within three months after, the end of each financial year, submit an annual report on the operations of the Corporation in that year concurrently to the Minister and to the President of the Treasury Board, and the Minister shall cause a copy of the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the Minister receives it.

[Reference to committee]

(2) An annual report laid before a House of Parliament pursuant to subsection (1) stands permanently referred to such committee of that House or of both Houses of Parliament as may be designated or established to review matters relating to the business and activities of the Corporation.

[Form and contents]

(3) The annual report of the Corporation shall include

(*a*) the financial statements of the Corporation referred to in section 60,

(*b*) the annual auditor's report referred to in subsection 62(1),

(*c*) a statement on the extent to which the Corporation has met its objectives for the financial year,

(*d*) quantitative information respecting the performance of the Corporation, including its wholly-owned subsidiaries, if any, relative to the Corporation's objectives, and

(*e*) such other information in respect of the financial affairs of the Corporation as is required by this Part or by the Minister to be included therein, and shall be prepared in a form that clearly sets out information according to the major businesses or activities of the Corporation and its wholly-owned subsidiaries, if any.

Part IV

Related and Consequential Amendments, Repeal, Transitional and Coming into Force

Related and Consequential Amendments

72. to 88. [Amendments]

Repeal

89. [Repeal]

Transitional

[Definitions]

90. (1) In this section,

["Executive Committee" « *bureau...* »]
"Executive Committee" means the Executive Committee of the Commission, as it existed on the day immediately before the coming into force of section 80;

["former Act" « *loi abrogée* »]
"former Act" means the Broadcasting Act, chapter B-9 of the Revised Statutes of Canada, 1985.

[Pending proceedings]

(2) Any proceedings pending before the Commission or Executive Committee on the day immediately before the coming into force of this subsection shall be taken up and continued before the Commission under and in conformity with this Act.

[Continuation of previous] orders, etc.]

(3) Every decision, order, rule and regulation issued, rendered or made under the former Act by the Commission or Executive Committee that is in force on the coming into force of this subsection and that is not inconsistent with this Act or any other Act of Parliament shall be deemed to have been issued, rendered or made by the Commission under this Act.

[Continuation of directions]

(4) Every direction issued to the Commission by the Governor in Council under the former Act that is in force on the day immediately preceding the coming into force of this subsection and that is not inconsistent with this Act or any other Act of Parliament shall be deemed to have been issued by the Governor in Council under this Act.

[Continuation of licences]

(5) Every broadcasting licence authorizing the carrying on of a broadcasting undertaking issued under the former Act and in effect on the day immediately preceding the coming into force of this subsection shall continue in effect for the unexpired portion of its term as if it were a licence authorizing the carrying on of a broadcasting undertaking, issued under this Act and may be amended, renewed, suspended or revoked in the manner provided in this Act.

[Full-time members of Commission]

91. (1) Every person holding office as Chairperson, Vice-Chairperson or full-time member of the Commission immediately before the coming into force of section 76 shall continue in office and be deemed to have been appointed under section 3 of the Canadian Radio-television and Telecommunications Commission Act, as amended by this Act, to hold office for the remainder of the term for which the person had been appointed before the coming into force of section 76.

[Part-time members of Commission]

(2) The part-time members of the Commission holding office immediately before the coming into force of section 76 shall cease to hold office on the coming into force of that section.

[Directors of Corporation]

92. Every person holding office as a director of the Corporation immediately before the coming into force of section 36 shall continue in office and be deemed to have been appointed under that section to hold office for the remainder of the term for which the person had been appointed before the coming into force of that section. Coming into Force

[Coming into force]

*93. This Act or any provision thereof shall come into force on a day or days to be fixed by order of the Governor in Council.

*[Note: Act in force June 4, 1991, see SI/91-86.]

Schedule

(Sections 24, 25 and 30)

1. Any licence issued pursuant to C.R.T.C. Decision No. 87-140 of February 23, 1987.

2. Any licence issued pursuant to C.R.T.C. Decision No. 88-181 of March 30, 1988.

3. Any licence issued in connection with the operation of any radio or television station owned and operated by the Corporation.

Date modified: 2002-01-07

APPENDICES

Appendix 4
Canadian Broadcasting Chronology

1852	The first Telegraph Act is passed.
1866	The first permanent transatlantic telegraph link is built from Newfoundland to Ireland.
1876	Alexander Graham Bell patents the telephone.
1880	The Bell Telephone Company of Canada is incorporated.
1893	Bell Canada is required to obtain the permission of the Governor in Council before increasing rates.
1900	In Arlington, Virginia Canada's Reginald Fessenden transmits a message to an experimental receiver some 80 kilometres away.
1901	The first transatlantic radiotelegraph signals are sent from England to Newfoundland.
1902	Canada's first wireless telegraphy station is established at Glace Bay, Nova Scotia.
1905	*The Wireless Telegraphy Act* is passed. It makes the Minister of Marine and Fisheries responsible for licensing.
1906	Reginald Fessenden makes the world's first radio broadcast from Brant Rock, Massachusetts.
1913	*The Radiotelegraph Act* is passed. It deals with licensing and the powers of the minister responsible (the Minister of the Naval Service).
1919	The first experimental broadcasting licence is issued to a Montreal radio station owned by the Marconi Wireless Telegraph Company of Canada. The station initially has the call letters XWA, but later becomes CFCF.
1920	The first Canadian radio broadcast takes place.

1922	The first private commercial radio stations are licensed.
1923	CN Railways begins radio service to trains.
1924	CN Radio opens its first stations.
1926	The Canadian Association of Broadcasters (CAB) is founded to advance the interests of commercial stations.
1927	The first national radio broadcast takes place on the occasion of the Diamond Jubilee of Confederation.
1928	The Minister of Marine and Fisheries submits a report to the Privy Council on the status of radio broadcasting. It recommends the establishment of high-power radio stations throughout Canada and greater expenditures on programming. It also recommends that a royal commission be appointed to examine broadcasting.
	The government appoints the Royal Commission on Radio Broadcasting, chaired by Sir John Aird.
1929	The Aird Commission submits its report. It recommends some form of public ownership in Canadian broadcasting and the creation of a chain of high-power stations, to be financed with revenue from a combination of receiver licence fees, the sale of advertising, and a government subsidy.
1930	The Canadian Radio League (CRL) is formed by Graham Spry and Alan Plaunt to lobby for a public network.
1931	The provinces of Quebec, New Brunswick, Manitoba, and Saskatchewan ask the Supreme Court to rule on whether the federal government or the provinces have jurisdiction over radio broadcasting. The case is decided in favour of the federal government.
	The first Canadian television station, VE9EC, goes on the air in Montreal. It is owned jointly by radio station CKAC and the *La Presse* newspaper.
	A licence is granted to Ted Rogers, Sr. to broadcast experimental television from his Toronto radio station.

1932 The Special Parliamentary Committee on Radio Broadcasting begins consideration of the Aird Commission's report. It recommends a chain of high-power stations and a commission to operate the stations and regulate the system.

On 18 May, Prime Minister Richard Bedford Bennett lays out three key principles concerning broadcasting: Canadian control of broadcasting, public ownership, and the airwaves as a natural resource to be reserved for public use.

The Canadian Radio Broadcasting Act is passed, establishing the Canadian Radio Broadcasting Commission (CRBC). Its mandate is to regulate and control all broadcasting in Canada and to provide a national broadcasting service.

Quebec appeals the 1931 Supreme Court decision to the Judicial Committee of the Privy Council of Great Britain, which also finds for the federal government.

1933 *The Canadian Radio Broadcasting Act* is amended to allow the CRBC to have more leeway in hiring, to spend revenues, and to purchase stations on the approval of Cabinet, rather than of Parliament.

The CRBC issues regulations that place a 40% limit on foreign programs.

The CRBC acquires CN Radio's facilities.

The CRBC's first daily national radio broadcast takes place.

Western Television Limited demonstrates its mechanical television system in Toronto, Montreal and Winnipeg.

1934 A parliamentary committee is appointed to examine the affairs and structure of the CRBC. It recommends that the life of the CRBC be extended for a year and that the government consider revising *The Canadian Radio Broadcasting Act*.

1936 A parliamentary committee is appointed to assess the administration of the 1932 *Canadian Radio Broadcasting Act*. It says the CRBC is unworkable and calls for a corporation resembling the British Broadcasting Corporation (BBC).

The Canadian Broadcasting Act is passed, replacing the CRBC with the Canadian Broadcasting Corporation (CBC). It is made responsible for providing a national radio service and for producing, broadcasting, and regulating programming.

1937 Canada, the United States, Mexico, and Cuba sign the Havana Agreement on the allocation of radio frequencies.

The CBC opens the French-language station CBF Montreal.

1939 A team of announcers and technicians accompanying the Canadian Armed Forces sets up Radio Canada's overseas service in England.

The first major Canadian display of electronic television takes place at the Canadian National Exhibition in Toronto.

1940 Canada's first FM station (CFRB-FM in Toronto) goes on air.

The first provincial school radio broadcasts begin in Nova Scotia and British Columbia.

1941 The Havana Treaty (North American Regional Broadcasting Agreement) is ratified.

The CBC News Service opens.

1942 The CAB asks the Association of Canadian Advertisers and the Canadian Association of Advertising Agencies to develop a system for pricing advertising airtime. This leads to the creation of the Bureau of Broadcast Measurement (BBM).

1944 The CBC creates a third public radio network, the Dominion Network, to provide a second choice of English-language programs. The basic English-language CBC network is renamed the Trans-Canada Network.

1945 The CBC International Service officially opens.

1946 The first CBC FM stations in Toronto and Montreal open.

1947 The CBC presents a 15-year plan for the development of television in Canada.

The first official electronic television broadcast is received in Windsor, Ontario from a Detroit, Michigan station.

1948 Television manufacturing begins in Canada.

1949 The federal government publishes its first federal television policy. The major principle of this interim policy is that the CBC control licensing, networking, and distribution.

The Royal Commission on National Development in the Arts, Letters and Sciences, chaired by Vincent Massey, is appointed. Its mandate includes examining the fields of radio and television broadcasting.

The CBC acquires the facilities of the Broadcasting Corporation of Newfoundland when the province joins Confederation.

1951 The Massey Commission submits its report. It recommends that control of the national broadcasting system continue to be vested in the CBC and supports the introduction of television, again under the control of the CBC.

The federal government introduces amendments to *The Canadian Broadcasting Act*, confirming the CBC's dominant place as operator and regulator.

1952 The federal government announces its television policy. It gives licences to the CBC and private stations, while reaffirming the CBC's control. Only one station per city is allowed until a national network is in place.

CBC Television is launched with the opening of CBFT Montreal (bilingual) and CBLT Toronto (English).

The CBC recommends the licensing of cable television systems.

The first Canadian urban cable television system is launched in London, Ontario.

1953 Receiver licence fees are abolished.

The first Canadian private television station is opened in Sudbury, Ontario.

CBFT Montreal begins full French-language television service with the opening of the English-language station CBMT.

Bell Telephone completes a microwave link between Toronto and Buffalo, New York to enable the direct exchange of television programs; it subsequently buildings a microwave link between Toronto and Montreal.

1955 The Royal Commission on Broadcasting, chaired by Robert Fowler, is appointed. Its mandate is to examine the financing of the CBC.

The opening of Parliament is televised for the first time.

1956 The Department of Transport establishes a policy on licensing community antenna television systems and refers it to the CBC.

1957 The Fowler Commission submits its report (Fowler I). It affirms the place of private broadcasters and recommends, among other things, that the broadcasting functions of the CBC be separated from its duties as the broadcasting regulator and that a separate and independent body be established to regulate broadcasting.

The National Community Antenna Association (forerunner of the Canadian Cable Television Association) is formed.

1958 *The Broadcasting Act* is passed, creating the Board of Broadcast Governors (BBG). The BBG is designed to regulate the establishment and operation of broadcasting networks and the activities of public and private radio and television stations.

The CBC Northern Service is established.

The first all-Canadian, coast-to-coast live television transmission is broadcast.

1959 The Board of Broadcast Governors (BBG) announces regulations for television stations, which include quotas for Canadian content. [See Canadian content chronology.]

After discussions with the BBG, the Department of Transport re-issues its policy on licensing community antenna television systems and seeks the BBG's advice on the effect of any proposed systems on television broadcasting.

1960	CBC Northern Service begins shortwave radio broadcasting to the High Arctic.
	The French-language private television station Télé-Métropole opens in Montreal.
	The BBG invites applications for Canada's first private television network; it approves the application by S.W. Caldwell Ltd. to form one with at least six stations unaffiliated with the CBC.
	The Royal Commission on Government Organization, chaired by J. Grant Glassco, is appointed. Its mandate is to examine all operations of government.
	North America's first large-scale pay television trial begins in Etobicoke, Ontario; it ends in 1965 with losses of $2 million.
1961	A committee consisting of representatives from the BBG, CBC, CAB, and the Department of Transport that was formed to study cable television and its effect on broadcasting makes its report. It says the Broadcasting Act's goal of a service that is basically Canadian in content and in character is not being met and Parliament should intervene.
	The CTV network (Canadian Television Network) is launched, with eight affiliated stations.
1962	The CBC's third radio network, the Dominion Network, is closed.
	The BBG amends the television regulations to allow more commercial time.
	The BBG amends the television regulations on credits for Canadian content. [See Canadian content chronology.]
	The BBG amends the television regulations to require a minimum of 40% Canadian content in programs carried between 6 p.m. and midnight.
	The CBC participates in the first Telstar satellite transmission from North America to Europe.
	Canada's first satellite, the Alouette, a scientific satellite, is launched.

1963 The Glassco Commission publishes its fourth report, which includes a chapter on the internal structural problems of the CBC.

The federal government appoints a special consultative committee to provide further advice on the CBC. The committee consists of Andrew Stewart, chairman of the BBG; Alphonse Ouimet, president of the CBC; and Don Jamieson, president of the CAB. They are referred to as the "Troika."

The BBG, the President of the CBC, and the President of the CAB recommend that no applications for television service for areas already served by television be considered; the Minister subsequently agrees.

1964 The Special Consultative Committee on Broadcasting Policy submits its report. The three members (the Troika) have divergent views, but recommend improving the two-board system.

A Committee on Broadcasting, chaired by Robert Fowler, is appointed by the Secretary of State to report on the broadcasting system.

The BBG enacts new FM radio regulations that are similar to its AM radio regulations.

1965 The Fowler Committee submits its report (Fowler II). It recommends that explicit goals be set for the broadcasting system.

The government announces its colour television policy.

The first regular CBC stereo broadcasts begin in Winnipeg.

1966 The White Paper on Broadcasting is published. It recommends that the BBG be reconstituted and its role vis-à-vis the CBC be strengthened. It also recommends that cable television systems be treated as components of the national broadcasting system.

The BBG decides it will not recommend for approval applications for AM radio stations in areas where local radio and television service is already available.

Canada's first colour television programming is broadcast.

The government appoints a committee, chaired by Dr. John Chapman, to establish a basis for a policy on space research in Canada.

1967 The Federal government releases its *White Paper on Broadcasting*, which refers to viewing choice as "almost a necessity of life."

The Chapman Committee submits its report, entitled *Upper Atmosphere And Space Programs In Canada*, which discusses using communications satellites to broadcast television signals and which recommends that steps be taken to ensure Canadian control of the domestic satellite system.

The CBC broadcasts an international telecast, by satellite, of the official opening of Expo '67.

1968 A new *Broadcasting Act* is passed, setting the broadcasting policy for Canada and creating the Canadian Radio-Television Commission (CRTC) to replace the BBG. The CRTC is given special responsibilities to ensure that ownership and control of broadcasting remain in Canadian hands, that programming be of high quality with substantial Canadian content, and that Canadian broadcasting serve to safeguard, enrich and strengthen the nation of Canada from sea to sea.

The government publishes a policy announcement on ultra-high frequency (UHF) television channels, in which educational broadcasting facilities are to be given first priority.

The government issues a White Paper outlining the need for a domestic satellite communications system.

Initial government contracts are awarded for the development of a Canadian communications satellite system.

The first televised debate among Canadian political party leaders is broadcast.

The National Community Antenna Association changes its name to the Canadian Cable Television Association.

1969 *The Telesat Canada Act* is passed, establishing a satellite system on a commercial basis.

Radio-Québec (the province's educational broadcaster) is established.

The CRTC announces the FM band will be "treated as a public asset with possibilities significantly different from those of AM radio."

The CRTC drops the BBG's 1966 rule limiting new AM stations in areas with existing local radio and television service.

The CRTC issues a major announcement on cable television, noting the technology had become a major factor in the Canadian broadcasting system. It sets out rules on the services that cable systems are required to carry.

Canadian television stations are required to fill 55% of their broadcasting day with Canadian content, and 40% of the time between 6 p.m. to midnight.

The Senate of Canada establishes the Special Senate Committee on Mass Media, chaired by Senator Keith Davey. Its mandate is to report on the ownership and control of the mass media.

1970 The Special Senate Committee on Mass Media (the Davey Committee) publishes its report. Its subjects are the ownership, control, influence, and public impact of the major Canadian media.

The CRTC introduces new Canadian content regulations for television. [see Canadian content chronology.]

The federal cabinet issues a directive to the CRTC requiring that all cable systems reserve one channel for educational broadcasting by the provinces.

TV Ontario (the province's educational broadcaster) is established.

The first UHF television station, CICA-TV Toronto, opens. It broadcasts programs of TV Ontario.

The government awards the contract for the construction of Anik, the first Canadian communications satellite.

1971 Canadian content regulations come into force for AM radio music.

The CRTC publishes a policy on cable television, entitled *Canadian Broadcasting: "A Single System,"* encouraging the development of cable television. One aspect of the policy is the provision under which a local channel can be substituted for a U.S. one on the cable service if both stations are carrying the same program.

The first French-language private television network, Télé-Diffuseurs Associés (TVA), is established.

1972 Radio-Québec begins operating on cable.

Global Television, Canada's third English-language television network, is licensed by the CRTC to serve five Ontario cities.

Anik A1, Canada's first domestic geosynchronous communication satellite, is launched.

CBC's International Service is renamed Radio Canada International.

The CRTC invites proposals for the future development of pay television.

1973 The federal government issues a position paper entitled *Proposals for a Communications Policy for Canada*.

Access Alberta (the province's educational broadcaster) is established.

The CBC begins live television broadcasts to the North via the Anik satellite.

1974 The Global Television Network begins broadcasting.

CBC's French-language FM stereo network opens.

1975 The CRTC issues cable television regulations that codify its 1971 policies. It establishes a policy for cable systems to offer a channel for the communities they serve.

In January, the CRTC releases its new FM policy. It develops an extensive set of content categories to describe stations' on-air content as thoroughly as possible; it will by condition of licence require FM stations to adhere to a promise of performance in which they commit to broadcast specific percentages of different types of programming; the CRTC also decides to prohibit any simulcasting.

In July, the CRTC amends its broadcasting regulations and delays implementation of its FM policy and allows some simulcasting.

The Federal Court of Appeal confirms that CRTC has the jurisdiction to allow Canadian cable systems to delete commercials on American television channels.

CBC's English-language FM stereo radio network opens.

1976 *The Canadian Radio-television and Telecommunications Commission Act* is proclaimed. It transfers responsibility for regulating federally chartered telecommunications carriers from the Canadian Transport Commission to the CRTC, which is renamed the Canadian Radio-television and Telecommunications Commission.

The CRTC proposes to exempt from regulation Master Antenna Television Systems (MATVs).

The CRTC sets out its policy on the carriage by cable systems of FM signals; it limits cable carriage of out-of-market FM stations to those that do not compete with, but 'complement' the market's FM stations.

The Communications Technology Satellite (CTS), later christened Hermes, is launched. This experimental satellite, a joint venture of the Department of Communications and NASA, is the prototype of direct-broadcast satellites.

1977 The CRTC conducts hearings on pay television.

The CRTC says it will consider applications for cable systems to carry the televised proceedings of the House of Commons debates, on the systems' special programming channels.

The CBC installs broadcasts facilities in the House of Commons at the Speaker's request.

1978 The CRTC releases its *Report on Pay Television* and recommends not introducing pay television.

The CRTC enacts Radio (FM) Broadcasting regulations and Radio (AM) Broadcasting Regulations.

1979 The Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty, chaired by J.V. Clyne, publishes a report entitled *Telecommunications and Canada*.

The federal government asks the CRTC to carry out public hearings into pay television. Accordingly, the CRTC establishes the Committee on Extension of Service to Northern and Remote Communities, chaired by Réal Therrien.

The CBC begins live television coverage of the House of Commons, distributing the signal live by satellite to cable systems in 15 major Canadian cities.

The CRTC implements the FM Policy (see 1975), reducing Canadian content levels.

1980 The Therrien Committee submits its report, entitled *The 1980s: A Decade of Diversity: Broadcasting, Satellites and Pay-TV.* It recommends that the CRTC call for applications for a Canadian television satellite service.

The B.C. Knowledge Network (the province's educational broadcaster) is established.

The Federal Cultural Policy Review Committee, chaired by Louis Applebaum and Jacques Hébert, is established.

1981 Canadian Satellite Communications Inc. is licensed "to deliver a basic package of attractive television and radio services to the more remote and underserved communities throughout Canada." (Public Notice 1985-60; Decision 81-252).

In a Public Notice, the CRTC calls for applications to provide pay television services.

1982 The Applebaum-Hébert committee submits its report. It recommends that the CBC abandon television production and buy programs from outside studios.

The CRTC publishes its initial decision on pay television (Decision 82-240) and issues six licences. The Decision sets out the regulatory framework for pay television.

Cancom, the first company in the world to deliver scrambled television signals via satellite to remote communities, opens.

The CRTC licenses Television de l'Est du Canada (TVEC), a French-language discretionary pay television service; it subsequently merges with First Choice's French-language service in 1984 (Decisions 821023 and 84-32).

Telesat Canada's Anik C3 satellite is launched. It is the world's first communications satellite with enough power to broadcast directly to small, home receiving dishes.

1983 The federal government publishes *Towards a New National Broadcasting Policy*.

The federal government publishes *Building for the Future: Toward a Distinctive CBC*. It rejects the idea of divesting the CBC of its production facilities.

The Federal government publishes *Direct-to-Home Broadcasting for Canada*, outlining the government's continuing interest in the use of Canadian satellites to distribute broadcasting services to underserved communities.

The CRTC issues its *Policy Statement on Canadian Content in Television* (Public Notice 1983-18). [See Canadian content chronology.]

The CRTC publishes *Cable Television Service Tiering and Universal Pay Television Service*, which establishes the regulatory framework for introducing Canada and U.S. specialty services on a discretionary basis and a tiering structure for cable television (Public Notice 1983245).

The CRTC approves Cancom's application to distribute scrambled signals of the three U.S. commercial and one non-commercial networks in its package of Canadian services (Decision 83-126).

The CRTC licenses Aim Satellite Communications to provide an English-language discretionary service; it subsequently merges with Allarcom's Superchannel discretionary pay television service in January 1984 (Decisions 83-115 and 84-2).

Creation of the Canadian Broadcast Program Development Fund (administered by Telefilm Canada) to ensure the production of high-quality Canadian television programming in the under-represented categories of drama, variety, children's, and documentary.

The CRTC publishes "Religious Broadcasting: Licensing Policy and Call for Applications for a Satellite-to-Cable, Interfaith Religious Programming Service" (Public Notice CRTC 1983-112). While rejecting broadcast undertakings dedicated exclusively to the views of a particular religion, it supports the introduction of a new, broadly based network programming service devoted to serving the varied religious practices and beliefs of Canadians.

The CRTC forms a Consultative Committee on Music on FM radio.

The first pay television channels open.

The federal government creates the Broadcast Program Development Fund.

1984 The federal government publishes *The National Film and Video Policy*.

The CRTC licences the first specialty television channels (Public Notice 1984-81).

The CRTC publishes pay television regulations (Public Notice 1984275).

The CRTC approves the re-structuring of Canada's pay television services (from six down to three).

The CRTC approves the consolidation of two French-language pay television undertakings to create Premier Choix: TVEC Inc (Decision 8432).

The CRTC licenses the MuchMusic, The Sports Network, Telelatino, and Chinavision specialty services (Decisions 84-338, -339, -444, and -445).

The CRTC adopts its Consultative Committee recommendations on simplifying the implementation of its FM policy (Public Notice 1984-4).

The CRTC amends its television regulations on Canadian content. [See Canadian content chronology.]

The CRTC publishes *Recognition For Canadian Programs*, in which it introduces a point system (Public Notice 1984-94). [See Canadian content chronology.]

The Federal Minister of Communications publishes a Department of Communications working paper on direct-to-home satellite broadcasting for Canada, which includes its policy objectives and findings.

The Federal-Provincial Committee on the Future of French-language Television is created by the Communications Ministers of Canada and Quebec, Marcel Masse and Jean-François Bertrand, to examine the challenges facing French-language television. It is chaired by the two respective deputy ministers.

The CRTC forms the Task Force on Access to Television in Underserved Communities headed by Commissioner Paul Klingle.

1985 The Federal-Provincial Committee on the Future of French-language Television publishes its report. It recommends recognizing the specific nature of the French-language television system within the Canadian broadcasting system.

The CRTC publishes "A Broadcasting Policy Reflecting Canada's Linguistic and Cultural Diversity" (Public Notice 1985-139).

The CRTC publishes "Northern Native Broadcasting" (Public Notice 1985-274), in which it addresses the distribution of aboriginal radio and television services. It is based on the principles contained in the 1980 Therrien Committee report.

The CRTC licenses The Life Channel, a discretionary pay television service that goes out of business in 1986 (Decisions 85-141 and Public Notice 1987-260).

Publication of the report of the Task Force on Access to Television in Underserved Communities entitled "The Costs of Choice" (Klingle Report).

The Task Force on Broadcasting Policy, chaired by Gerald Caplan and Florian Sauvageau, is established.

The CRTC announces it has formed a Task Force on French-Language Popular Music, to assess French-language broadcasters' difficulties in meeting required levels of French-language vocal music (Public Notice 1985-100).

The CBC joins TV5, a European French-language satellite service.

1986 The Caplan-Sauvageau Task Force submits its report. It recommends a new *Broadcasting Act* to respond to changing conditions.

The Federal Task Force on Program Review (Nielsen Task Force) publishes recommendations on culture and communications.

The CRTC enacts new cable regulations to replace those in force since 1976. While recognizing the need for a flexible environment, the regulations say Canadian television and audio services must predominate.

The CRTC enacts new radio regulations, which make the CRTC's role more of a supervisory one.

The CRTC reduces Canadian content requirements for Canadian pay television services.

The CRTC decides against permitting the introduction of pay-per-view services (Public Notice 1986-313).

The CRTC publishes "Policy On Sex-Role Stereotyping In The Broadcast Media" (Public Notice 1986-351), in which it sets expectations with regard to sex-role stereotyping.

The CRTC allows French-language AM stations to reduce their minimum use of French-language music from 65% to 55% for two years.

The CRTC's Consultative Committee on Music and Radio issues *The Country Music Industry in Canada*.

A second private French-language television channel (Quatre Saisons) opens in Montreal.

1987 The CRTC publishes "Regulatory Policy for Direct-to-Home Satellite Broadcasting Systems, Multipoint Distribution Systems, and Subscription Television Systems" (Public Notice 1987-254).

In licensing nine new Canadian specialty and pay television services, the CRTC decides cable licensees have a responsibility to ensure that Canadian services are provided fair and equitable access to their cable systems (Public Notice 1987-260).

The CRTC sets out the rules governing the distribution of programming services as part of the basic service or as discretionary services (Public Notice 1987-261).

The CRTC revises the television regulations and reaffirms the 60% overall and 50% prime time Canadian content requirements (Public Notice 1987-8). [See Canadian content chronology.]

The CRTC approves the CBC's application for a network licence to provide a national English-language all-news channel (Decision 87-904) and licences nine additional new specialty channels.

The CRTC decides not to reduce the Canadian content requirements for country music broadcasters.

The House of Commons Standing Committee on Communications and Culture begins consideration of the Caplan-Sauvageau Report.

1988 The House of Commons Standing Committee on Communications and Culture submits its report on broadcasting policy, in which it makes 143 recommendations.

The federal government tables a new broadcasting policy, entitled *Canadian Voices: Canadian Choices*.

Cabinet approves the CBC licence to operate an English-language all-news channel.

The Saskatchewan Court of Appeal holds that a broadcasting undertaking includes broadcasting transmitting and receiving systems, whether or not the systems are operating for profit or gain, or contain commercial elements.

The CRTC amends the 1986 Cable Television Regulations, increasing the mark-up that cable systems may add to their basic monthly subscriber fees to cover additional operating costs associated with the introduction of new specialty services (Public Notice 988-57).

The CRTC states that it would be prepared to deal with pay-per-view proposals (Public Notice 1988-173).

The CRTC issues a policy on open-line programs (for radio, television or a cable community channels), to encourage broadcasters to develop their own guidelines that will prevent abusive comment and ensure balance and high standards in such programming (Public Notice 1988-213).

The international French-language channel TV5 begins broadcasting in Canada.

The CRTC establishes a task force "to study the problem surrounding the broadcast of dubbed programs by French-language television stations in Canada."

1989 The *Copyright Act* is amended to require cable and satellite companies to pay for the retransmission of works included in distant broadcast signals; expands the concept of "communication to the public" from broadcasting to include all forms of telecommunication.

The CRTC issues its policies for radio and television networking and radio syndication (Public Notices 1989-2, -3, -4).

The CBC English-language all-news channel, Newsworld, is launched.

The CRTC task force on French-language dubbing issues its report.

The CRTC holds hearings to consider the CBC's application to operate a French-language all-news channel. It rejects this first proposal.

1990 The CRTC approves an application by Allarcom Pay Television Limited (APT) for a network licence to provide a pay-per-vew service, on an experimental and temporary basis, to subscribers of Allarcom's discretionary pay television service (Superchannel) in the three cities of Regina, Saskatoon and Yorkton, Saskatchewan (Decision 90-78).

The CRTC publishes "Native Broadcasting Policy" (Public Notice 1990-89), in which it updates its regulatory approach to aboriginal broadcasting.

The CRTC approves the transfer of control of Global Communications Limited to CanWest Communications Enterprises Inc. (Decision 901073).

The CRTC publishes *An FM Policy for the Nineties*; it increases minimum Canadian content levels on most popular music FM stations, from 20%, to 30%, increases stations' flexibility to meet their audiences' needs, and changes the daily limit on advertising from 150 minutes, to 15% of the broadcast week (Public Notice 1990-111).

The CBC announces a major restructuring of its television services; to address a $108-million deficit in its budget, it changes six television stations from originating to rebroadcasting stations, and withdraws from television programming intended for purely local audiences to concentrate on regional, national, and international programming.

The federal government appoints the Task Force on the Economic Status of Canadian Television, chaired by Jacques Girard and J.R. Peters. Its mandate is to examine the underlying financial structure of the Canadian television system.

1991 The *Broadcasting Act* is amended. It changes the emphasis on the broadcasting system as a single system, changes the organisational structure of the CBC, strengthens the system's commitments to the regions, and includes requirements for the representation of Canada's multicultural nature.

The Girard-Peters Task Force submits its report, entitled *The Economic Status of Canadian Television*. It makes 44 recommendations, including one for a summit meeting of the broadcasting industry.

The Supreme Court of Canada agrees with the Saskatchewan Court of Appeal that a broadcasting undertaking includes transmission or receiving systems, regardless of whether the undertaking is operating for profit or gain, or includes a commercial element. Not-for-profit broadcasters must therefore also be licensed by the CRTC.

The CRTC announces a new, 'streamlined' community channel policy (Public Notice 1991-59); it gives cable systems more flexibility in how they share programming, establishes a minimum funding guideline, and allows some advertising in areas where there is no local commercial radio or television station.

The CRTC amends the 1986 radio regulations; Canadian content levels are applied to both AM and FM (Public Notice 1991-89).

The CRTC licenses Canada's first pay-per-view television service, Viewer's Choice Canada (Decision 91-160).

The Television Industry Summit is held in Montreal, Quebec in December.

The CBC publishes its vision for the future entitled *Mission, Values, Goals and Objectives*.

1992 The House of Commons Standing Committee on Communications and Culture submits a report entitled *Culture and Communications: The Ties That Bind*. This study examines the implications of culture and communications for Canadian unity.

The CRTC publishes "Policies for Community and Campus Radio" (Public Notice 1992-38), which ensures that stations have flexibility while ensuring that they offer a programming alternative.

The CRTC issues "1992 Policy on Gender Portrayal" (Public Notice 1992-58), in which it reviews developments since the 1986 "Policy On Sex-Role Stereotyping."

The CRTC publishes *A Review of the CRTC's Regulations and Policies for Radio*, in which it develops a new regulatory framework that "will allow broadcasters as much flexibility as possible in responding to the financial difficulties they now face, insofar as these difficulties relate to regulation" (Public Notice 1992-72).

The CRTC licenses Allarcom Pay Television to carry on Canada's second pay-per-view service, Home Theatre, to service Western Canadian subscribers (Decision 92-28).

Telesat Canada is privatized and the federal government extends its monopoly in satellite communication for 10 years.

1993 The federal government publishes *Unique Among Nations*, its response to the recommendations of the House of Commons Standing Committee on Communications and Culture presented in *The Ties That Bind*.

The CRTC indicates that digital direct-to-home (DTH) delivery of programming services via satellite will play a significant role in helping to achieve the objectives for the Canadian broadcasting system. It also asserts jurisdiction over foreign DTH distributors offering their services either in whole or in part in Canada (Public Notice 1993-74).

The CRTC publishes "Religious Broadcasting Policy" (Public Notice 1993-78), which stresses the importance of balance.

The CRTC publishes "A Licensing Policy for Low-Power Radio Broadcasting" (Public Notice 1993-95).

The CRTC publishes *Changes to the Radio Regulations, 1986 Concerning Canadian Music, French-Language Vocal Music, and Logging Requirements* (Public Notice 1993-173). [See Canadian content chronology.]

1994 The CRTC grants the CBC a licence to operate a French-language all-news channel (Decision 94-285).

The CRTC announces principles for the new Canadian production fund, which begins operations in January 1995 (Public Notice 199410).

The CRTC grants licences to two new pay services and eight new specialty services (Public Notice 1994-59).

The CRTC exempts DTH services from licensing requirements, provided they are Canadian owned, use Canadian satellite facilities, and carry more Canadian services than foreign ones (Public Notice 1994-111).

The Federal Government establishes the Information Highway Advisory Council.

1995 The House of Commons Standing Committee on Canadian Heritage presents its report entitled *The Future of the Canadian Broadcasting Corporation in the Multi-Channel Universe*. This study reviews the role of the CBC and identifies potential sources of new revenues.

The CRTC issues a report entitled *Competition and Culture on Canada's Information Highway: Managing the Realities of Transition*. It assesses competition, facilities, and support issues surrounding the 'information highway' and announces its intention to introduce competition into broadcast distribution.

The Information Highway Advisory Council (IHAC) studies the CRTC report and issues its own report, entitled *Connection, Community, Content: The Challenge of the Information Highway*.

The CRTC renews licences for privately owned English-language television stations and introduces a "flexible policy approach with an emphasis on promoting Canadian entertainment programming."

Orders-in-Council P.C. 1995-1105 and -1106 provide directions to the CRTC regarding the licensing of DTH satellite distribution and pay-per-view television programming undertakings; they require the CRTC to ensure that only licensed persons may carry on DTH satellite distribution undertakings.

The CRTC publishes "A Policy to Govern the Introduction of Digital Radio" (Public Notice 1995-184).

The CRTC revokes its DTH exemption order of 1994 (Public Notice 1995219).

The CRTC licenses Canal Première, a French-language pay-per-view service (Decision 95-900).

The CRTC issues licences to ExpressVu and Power DirecTv to carry on new, national, direct-to-home (DTH) satellite distribution undertakings (Decision 95-901 and -902).

The CRTC grants the CBC a licence to operate a new digital audio music service called Galaxie (Decision 95-914).

The CRTC approves the sale of the Alberta Educational Communications Corporation (ACCESS) to Learning and Skills Television of Alberta Limited (LTA) (Decision 95-742).

The CBC's French-language all-news channel, the Réseau de l'information (RDI), is launched.

The CBC Web Site is established.

The federal government appoints a Mandate Review Committee, chaired by Pierre Juneau, to study the mandates and future role of the CBC, the National Film Board and Telefilm Canada.

The Task Force on the Implementation of Digital Television is established.

Telesat's Anik E1 satellite losses 14 radio-frequency channels, more than half its capacity.

1996 The Mandate Review Committee on the CBC, the National Film Board, and Telefilm Canada tables its report, entitled *Making Your Voices Heard* (the Juneau Report). It makes 95 recommendations.

The IHAC releases its report entitled *Building the Information Society: Moving Canada into the 21st Century*.

The federal government publishes its policy framework on convergence, entitled *Convergence Policy Statement*.

The CRTC notes that Power DirecTv will not launch its DTH distribution service.

The CRTC issues a licence to Star Choice to undertake, national direct-to-home (DTH) satellite distribution undertaking (Decision 96-529).

The CRTC approves the application by Shaw Communications Inc., a major cable company, for a national DTH satellite distribution service called Homestar (Decision CRTC 97-38).

The *Bell Canada Act* is amended to allow it to hold a broadcasting licence.

The CRTC licenses 24 new specialty and pay television services (Public Notice 1996-120).

The Federal Minister of Canadian Heritage, Sheila Copps, announces the creation of the Canada Television and Cable Production Fund, combining the Cable Production Fund and Telefilm Canada's Broadcast Fund.

1997 The IHAC releases its final report entitled *Preparing Canada For A Digital World*.

The Task Force on the Implementation of Digital Television submits its report, entitled *Canadian Television in the Digital Era*.

The Minister of Canadian Heritage announces stable funding for the CBC for five years, beginning in April 1998.

The CRTC publishes a new regulatory framework for broadcasting distribution undertakings (BDUs), including all cable, DTH satellite, and radio communication distribution undertakings (Public Notice 1997-25). It later publishes "Broadcasting Distribution Regulations" (Public Notice 1997-150), based on the new framework.

The CRTC decides that BDUs must direct 80% of their programming contributions to the Canada Television and Cable Production Fund; the remaining 20% can he directed to one or more other independently-administered funds (Public Notice 1997-98).

The CRTC approves BCE's acquisition of 31.173% of ExpressVu from Tee-Comm Electronics; this gives BCE 70.67% of the voting interest in ExpressVu (Decision 97-149).

The CRTC grants a new MDS radio communication distribution licence to LOOK TV Inc. to serve communities in southern Ontario (Decision 97370).

The CRTC approves the merger of Star Choice Television Network with Shaw Communication's Homestar Services Inc.; Homestar will not implement its licence (Decision 97-677).

Galaxie, a pay audio service delivered by satellite and cable, is launched.

1998 The CRTC publishes revisions to its commercial radio policy entitled "Commercial Radio Policy 1998" (Public Notice 1998-41).

The CRTC publishes "A Policy Framework for the Introduction of Competition to the Satellite Relay Distribution Industry" (Public Notice 1998-60) and approves an application by Star Choice Television Network Incorporated to carry on a second national satellite relay distribution undertaking, similar to that operated by Cancom.

The CRTC publishes a report on additional national television networks (Public Notice 1998-8). It recommends against calling for applications for additional English-language, French-language, or bilingual national networks.

The CRTC approves LOOK TÉLÉ's application for an MDS licence to serve areas of Montreal, Quebec City, eastern Ontario, and western Quebec (Decision 98-55).

The CRTC approves Star Choice's application to carry on a national satellite relay distribution undertaking (SRDU). At the same time, the CRTC denies Prime Time Canada's application (Decisions 18-172 to 98174).

1999 The Senate Subcommittee on Communications of the Standing Senate Committee on Transport and Communications publishes a report entitled *Wired to Win! Canada's Positioning Within The World's Technological Revolution*.

The House of Commons Standing Committee on Canadian Heritage publishes a report entitled *A Sense Of Place, A Sense Of Being*, in which it recommends that the CBC receive continuous, stable funding.

The CRTC publishes "Building On Success — A Policy Framework For Canadian Television" (Public Notice 1999-97), which sets out a new regulatory framework to support a financially strong broadcasting system.

The CRTC publishes its policy on new media – services delivered over the Internet — (Public Notice 1999-84), in which it says it will not regulate new media activities on the Internet.

The CRTC publishes "Ethnic Broadcasting Policy" (Public Notice 1999-117), which revises its 1985 policy.

The CRTC approves an application by Bell ExpressVu (formerly ExpressVu) for a broadcasting licence to carry on a national satellite relay distribution undertaking (Decision 99-87).

The CRTC licences a national, direct-to-home pay-per-view (DTH PPV) service by Bell Satellite Services Inc. offering movies and other acquired programming on up to 22 English-language channels, and eight French-language channels (Decision 99-88).

The CRTC licenses four new French-language specialty services (Decisions 99-109 to -112.).

The CRTC approves the merger of the Cancom and Star Choice satellite relay distribution undertakings (Decision 99-169).

The CBC publishes its strategic vision and plan for the future, entitled *Our Commitment to Canadians — The CBC's Strategic Plan*.

Telesat launches the Nimiq satellite, Canada's first direct broadcast satellite.

2000 The CRTC renews the CBC's radio and television licences. The emphasis is on preserving and reinforcing existing radio and television services with the aim of strengthening representation from all regions of the country.

The Prime Minister announces $60-million of additional funding for the CBC.

The CRTC publishes "Licensing Framework Policy for New Digital Pay and Specialty Services" (Public Notice 2000-6), which is intended to enhance diversity and choice for viewers.

In response to Order in Council P.C. 2000-1464, the CRTC seeks public input on measures to ensure that the residents of the Greater Toronto Area receive a range of radio services reflective of the diversity of their languages and cultures (Public Notice 2000-144).

In response to Order in Council P.C. 2000-1551, the CRTC seeks public input on the earliest possible establishment of over-the-air television services that reflect and meet the needs of the multicultural, multilingual and multiracial population of the Greater Vancouver Area (Public Notice 2000-145).

The CRTC decides to issue licences to 16 English-language and five French-language Category 1 digital specialty television services, as well as 262 Category 2 services (Public Notice 2000-171).

The CRTC publishes "Campus Radio Policy" (Public Notice 2000-12) and "Community Radio Policy" (Public Notice 2000-13), which revise its 1992 policies in order to streamline the regulatory requirements.

The CRTC adopts regulatory amendments to its Ethnic Broadcasting Policy (Public Notice 2000-92).

The CRTC approves an application by Shaw Communications Inc. to acquire control of Cancom (Decision 2000-213).

The CRTC approves an application by CanWest Global Communications Corp. to purchase the conventional television assets of WIC Western International Communications Ltd. (Decision 2000-221). The addition of three Alberta stations makes Global Television a coast-to-coast network.

The CRTC approves the transfer of effective control of CTV Inc., one of Canada's largest television broadcasters, by BCE Inc., Canada's largest telecommunications company (Decision 2000-747).

The CBC and Corus Entertainment Inc. offer a new 40-channel digital music service.

Telesat launches its latest satellite, the Anik F1, to provide enhanced Canadian coverage, as well as services throughout the United States and South America.

2001 The CRTC reports to the Governor in Council on measures to ensure that the residents of the Greater Toronto Area receive a range of radio services reflective of the diversity of their languages and cultures (Public Notice 2001-10).

The CRTC publishes "Achieving a Better Balance: Report on French-Language Broadcasting Services in a Minority Environment" (Public Notice 2001-25), in which it sets out the goal, given the rapid introduction of digital technologies, of providing all Canadians with access to all Canadian, English- and French-language specialty services and at least one pay television service.

The CRTC reports to the Governor in Council on the earliest possible establishment of over-the-air television services that reflect and meet the needs of the multicultural, multilingual and multiracial population of the Greater Vancouver Area (Public Notice 2001-31).

The CRTC calls upon the Canadian Association of Broadcasters to prepare an action plan for the creation of an industry/community task force to examine, and find ways to improve, the representation of Canada's cultural diversity on television (Public Notice 2001-88).

The CRTC announces that it intends to make the televised proceedings of the House of Commons more accessible to Canadians in the official language of their choice (Public Notice 2001-115).

CanWest Global Communications Corp. announces that it has sold its interests in the Montreal Television station CFCF and in ROBTv, as required by the CRTC when CanWest bought eight television stations previously owned by WIC Western International Communications Ltd.

The CRTC renews the licences of the television stations owned by CTV Inc. (CTV) and CanWest Global Communications (Global) for seven years. The CRTC imposes a number of conditions, including a requirement for both CTV and Global to adhere to a Statement of Principles and Practices regarding cross ownership of television stations and newspapers.

The CRTC approves the transfer of control of Groupe TVA (TVA) to Quebecor Media Inc. (QMI) and renews TVA's licence for seven years. QMI is required to sell its holding in TQS Inc. to a third party (Decisions 2001-384 and -385).

On 18 September, COGECO and Bell Globemedia announce they would jointly acquire Quebecor's holding in TQS and create a joint venture regrouping the TQS network and Cogeco Radio-Television Inc.'s six television stations. In December, the CRTC approves the transfer of TQS to Cogeco and Bell Globemedia (Decision 2001-746).

In September, as many as 60 new digital television channels are launched.

2002 The CRTC announces its regulatory framework for the transition to digital over-the-air television (Public Notice 2002-31).

In response to Order in Council P.C. 2002-1043, the CRTC seeks public input on the broadcasting regulatory framework for Internet retransmission of over-the-air television and radio signals (Public Notice 2002-38).

The CRTC awards a licence to Multivan Broadcast Corporation for a new over-the-air ethnic television service in Vancouver (Decision 2002-39).

The CRTC issues a new policy on community-based media, reaffirming and strengthening its commitment to community access and local programming (Public Notice 2002-61).

The CRTC licenses Craig Broadcasting Systems Inc. to operate two new over-the-air television stations to service Toronto and Hamilton (Decisions 2002-81 and -82).

The CRTC approves the sale of 21 Telemedia radio stations in Quebec and the Maritimes to Astral Media Inc. It also approves the sale of Telemedia's 64 radio stations and two television stations in Alberta, British Columbia and Ontario to Standard Radio Inc. and the acquisition by Rogers Broadcasting Ltd. and NewCap Inc. of 14 and 15 stations respectively of the 64 stations purchased by Standard (Decisions 2002-90 to -93).

In April, the Minister of Canadian Heritage, Sheila Copps, launches a review of the definition of Canadian content in film and television production. The review is coordinated by François Macerola, who is expected to report by 31 March 2003.

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APPENDICES

Appendix 5

Glossary

ADSL (Asymmetric Digital Subscriber Line): Technology that employs standard twisted-pair copper telephone wire to transmit and receive information at high speeds. It is "asymmetric" because the download speed (i.e., to the subscriber) is faster than the upload speed.

Affiliate: A broadcast station (usually independently owned) that has a contractual relationship with a network to carry the network's programs and announcements in specific time periods.

Analog Signals: Analog signals travel as waves. Human speech is composed of waves (of air) that we hear as different sounds. Before 1960 telephone conversations were transmitted as analog signals. Human speech was transformed into electromagnetic waves. Waves are described in terms of frequency. Frequency is described in Hertz (Hz). Bandwidth refers to capacity but is expressed differently in analog and digital transmissions. In analog systems bandwidth is described in hertz.

Anik: The family name for Telesat Canada's satellites. Anik means brother in the Inuit dialect.

Antenna: A device for radiating and receiving radio waves, usually designed to focus the waves to or from one direction. The antenna is often referred to as a dish.

Bandwidth: A measure of the amount of frequency spectrum occupied by a signal. Usually measured in Hertz (Hz), Kilohertz (KHz) or Megahertz (MHz). Also a measure of the information capacity of a transmission channel. Originally bandwidth capacity was described in bits per second, *bps*. The more bandwidth a channel has, the more information it can carry. When bandwidth is large enough, full motion video — such as television signals — can be carried. Broadband is lots of bandwidth.

Bits (bytes): A bit is a 1 or a 0 in our digital world. It takes 8 bits to represent a character (e.g., the letter "a"). Eight bits is a byte. Transmission speed over a network is described in bits per second (*bps*). The storage capacity of a disk is described in bytes (e.g., a computer might have a 20 gigabyte hard drive).

Bot: A software program that provides limited capabilities of artificial intelligence (derived from robot).

BDU: broadcasting distribution undertaking.

Bps: Bits-per-second. Describes the speed with which data is transferred within a network. Increases in speed have led to other acronyms. A thousand bits per second is Kbps (a kilobit) and a million a second is a megabit (Mbps).

Broadband, Narrowband, or Wideband: These are terms that correspond to slow and fast. A 'narrowband' network might carry 24 voices or data telephone conversations on a fiber optic cable at 1.54 million bits per second (1.54 Mbps). A "wideband" network might carry 672 conversations over a fiber optic cable at 44.7 million bits per second (44.7 Mbps). Broadband is synonymous with *high bandwidth*.

CAVCO: The Canadian Audio Visual Certification Office, located within the Department of Canadian Heritage administers the system that determines how many points a Canadian production has obtained. Productions receiving 10 out of 10 points are often referred to as "distinctively Canadian," while productions receiving 6 out of 10 points are referred to as "industrial productions."

CTF: Canadian Television Fund.

CD: Compact disc. The compact disc was developed by Sony and Phillips and commercially available in the early 1980s. By 1986 CDs were outselling vinyl recordings.

Coaxial Cable: A cable composed of a copper wire surrounded by insulation, which is itself surrounded by a grounded shield of braided wire to minimize interference.

Compression: A set of techniques to store information (e.g., a photograph) using fewer bits. There are many different standards in use (e.g., JPEG, ZIP, GIF). The ability to compress a data file means that it can be sent more quickly over a network. In particular, it can be sent more quickly over the "last mile" to households who do not have access to lots of bandwidth (broadband).

Convergence: Used in at least three different ways. During the 1970s the more common term was "integration." Integration (of different modes of telecommunication) referred to the fact that distinctions between the telephone and cable systems were breaking down with the emergence of digital technologies. For example, what had been the "plain old telephone system" (*POTS*) would carry voice, data and video signals. As technical changes eroded the distinctions between modes of telecommunication the companies involved developed business plans to exploit the new capabilities. This led to a second use of the word "integration" or "convergence" namely changes in ownership (e.g., mergers and acquisitions within broadcasting and telecommunications companies). Many current (2001-03) articles in the news media discuss mergers and acquisitions in terms of convergence. The third use of the term refers to the consumer who increasingly will notice little difference among a variety of broadcasting and telecommunication services in the home. At some point in the near future there will be, for the consumer, no noticeable difference between what is now referred to as television and the computer. The world of telecommunications and computing will have become "seamless."

Convergence and New Media (CRTC definition): The term "convergence" refers to the use of digital technology for the exchange of information, whereby new, interactive services and products combine voice, data, text and/or image. It also applies to the availability of conventional communications services on the Internet and to organizations operating across previously distinct boundaries, for example, cable companies in the telephone and Internet businesses and telephone companies taking on broadcasting activities. Convergence has had a major impact not only on the industries under our jurisdiction, but on the lives of all Canadians.

Copper Wire: Copper wire was used for telephone systems (until the invention of glass or plastic fiber which uses pulses of light). Copper wire into households is currently limited to approximately 56,000 bits per second (56Kbps). However, voice communications are carried only on 4 kilohertz of the available frequencies on copper wire. It is technically possible to send data downstream (to the home) at a rate of 8 million bits per second (8 Mbps) and upstream (from the home to the telephone company office) at one million bits per second (1Mbps).

CRTC: Canadian Radio-television and Telecommunications Commission. An agency of the Government of Canada that regulates all aspects of the broadcast and telecommunications industries.

Crisis: A time of danger or great difficulty, the turning point of a disease, a decisive moment.

Cross-Platform: Cross-platform refers to the idea of promoting a television show, a movie or a special event (e.g., the *Juno Awards*) in a number of different media. For example, advertisements could appear in a newspaper, on the radio, on billboards and on television. Promotion of an event across a number of platforms predates the notion of convergence and cross-media ownership. One of the supposed benefits of cross-media ownership is the ability to use all of a company's assets to promote a television program or movie. It is not clear that this is a particular advantage of cross-media ownership, just as the idea of selling advertising across a company's various media ("bundled advertising") does not appear to have produced the benefits claimed for it. However, the ability to promote a particular event (e.g., the *Juno Awards*) in a number of different ways only some of which involve advertising can produce successes that may not be available to media organizations with a more limited range of outlets.

Dark Fibre: Optical fibre that is in place but is not connected to transmission equipment. Fibre that is in use is referred to as lit fibre.

Digital: Refers to the storage of information as strings of 0s and 1s. Information is stored on a CD or a videodisc in a digital format. Although the idea of storing information in a digital format is as old as Leibniz (1600s) the key technical development was probably the invention of the transistor (1947) and the creation of the first integrated circuit (1957). One could say that the digital age began for the larger public with the invention of the first personal computers (early 1980s).

Digital Compression: Technology used to compress a stream of computer-generated digital information. It allows information to be sent using less bandwidth and makes more "space" available for more channels and/or services. Using high-speed computers, it means more complex information can be digitized; working with various combinations of sound, still images, video and text. Digital video compression (DVC) reduces the amount of channel bandwidth required to transmit a conventional television signal. Digital audio compression does the same for music or other audio services.

Digital Information: Uses the binary code of computer language. Television and audio analog signals are converted to a digital bit stream. With computers these "bits" of information are endlessly interchangeable. Letters, numbers, sounds and images are reduced to a sequence of computerized digital pulses or "bits" of information comprised of zeros and ones. A digitized audio signal provides sound comparable to compact discs.

Digital Signals: Digital signals travel as binary bits. A bit is composed of two parts. The presence or absence of a voltage produces the two parts. On correspond to "ones" and off corresponds to 'zeroes.' Digital signals have several advantages over analog signals. They can travel at higher speeds, provide clearer voice quality, have fewer errors and require less complex equipment. In digital systems, bandwidth is described in bits.

Discretionary Service: A programming or non-programming service not included as part of the basic service offered by a cable system. It is offered to subscribers on a discretionary (optional) basis, either individually or in a package, for a fee separate from, and in addition to, the basic monthly fee.

Diversity: Variety. Montaigne in his *Essays* has this to say, "And there were never in the world two opinions alike, anymore than two hairs or two grains. Their most universal quality is diversity."

DBS: Direct Broadcast Satellite.

DSL: Digital Subscriber Line.

DTH: Direct-to-Home, direct-to-home satellite distribution.

DVD: Digital Versatile Disc. Sometimes referred to as Digital Video Disc.

FCC: Federal Communications Commission. The regulator that is responsible for broadcasting and telecommunications licensing in the United States.

Fibre Optics: A communications technology that sends signals down cables made of glass fibre. Narinder S. Kapany in England developed it during the 1950s. Fibre-optic cable is cheaper than copper wire and allows almost unlimited bandwidth. If copper wire supports transmission speeds in megabits per second (mbps) fibre-optic cable easily supports transmission speeds in gigabits per second (gbps).

Footprint: The area on the earth that a signal covers.

Format: The general character of a program (e.g., all-news, classical, oldies, etc.).

Gigabits: A billion bits per second.

HDTV: High Definition Television. A system with higher resolution, or picture quality, than conventional television (which uses 525 lines per picture frame).

Internet Protocol (IP): A protocol (i.e., a set of rules) for sending information from one computer to another. Data sent from one computer to another using the Internet protocol are sent in packets. Each packet contains a header (including the address) and the message.

Modulation: The process whereby some characteristic of a carrier is varied in accordance with some characteristic of the signal to be carried. For example, the frequency of the carrier can be varied according to the amplitude of the signal.

MAPL: An acronym composed from Music, Arrangement, Performer, Lyrics. To count as Canadian content on a radio station a record has to have two of the four categories. For example, if a Canadian wrote the lyrics and a Canadian sings the song then the record will count as Canadian content.

MDS: Multi-point distribution system. Off-air retransmitters carrying scrambled signals.

MTV: Multiple channel undertaking, or multi-transmitters. Off-air retransmitters carrying unscrambled signals

Multiplexing: Provides an electronic means of allowing a number of different signals (voice, data, audio or video) to be sent over the same line (whether copper telephone line, coaxial cable or fibre optic cable) at the same time without interfering with one another.

Multiplexed Programming: Programming broadcast by a pay television service that is distributed on two or more channels of a cable television undertaking. This provides staggered viewing start times for any given program.

Narrowcasting: Programming designed to appeal to special interest or age groups.

Nimiq 1& 2: Nimiq was Canada's first Direct Broadcast Satellite. Nimiq is an Inuit word meaning any object or force that unites things or binds them together.

Pay Television Service: A television service such as those consisting of movies only which are offered via cable or direct satellite feed on a per channel basis (e.g. SuperChannel in Western Canada and The Movie Network in Eastern Canada or the Family Channel). Advertising on pay television is prohibited by CRTC regulations. All pay TV services are authorized for cable TV carriage on a discretionary basis only.

Pay-Per-View Service: A purely discretionary service, typically consisting of movies and special events. It is offered via cable or direct satellite feed on a "pay-per-program" basis. Pay-per-view services offer subscribers the option of selecting the specific programming they want to watch and pay for.

PDTH: Pay-per-view direct-to-home.

People Meter: A meter attached to a television set to measure individual viewing habits.

PCS (Personal Communications Service): PCS is a wireless telephone service that operates in a similar way to cellular telephone service using digital technology for transmission and reception.

Photonics: All of the elements of optical communications. This includes fiber, lasers, and optical switches and all elements involved in transmitting light over fiber.

Point-of-Presence (POP): A point-of-presence is an access point to the Internet. Each POP has a unique Internet Protocol address.

Programming: Addressable technology allows cable companies to individually send and possibly receive information from their "address" to the subscriber's "address." It provides greater choice and customization of services to subscribers. The cable operator controls signals provided to individual subscribers through special equipment installed at the cable company and addressable receiving apparatus installed on or off the subscriber's premises. Addressable decoders will allow subscribers more flexibility in tailoring their packages of cable TV services.

POTS: Plain Old Telephone System.

PPV: Pay-per-view.

Protocol: A formal set of conventions that govern the formatting and relative timing of message exchange between two communicating systems.

Router: A physical device that joins multiple networks together. On the Internet, a router is a device or software that determines the next network point to which a packet should be forwarded.

Simultaneous Substitution: Cable or satellite replacement of American identification and commercials with Canadian where the U.S. and Canadian station are telecasting the same episode of a program at the same time.

Specialty Television Services: A specific type of programming aimed at a specific audience group (e.g. The Sports Network, MuchMusic, YTV, etc.). Most specialty services have lower limits on the maximum amount of advertising they can carry than do conventional television stations or networks, which aim their services at a broad spectrum of the population. A specialty TV service may be authorized for distribution either as part of the basic cable TV service, or as part of a discretionary package of services. Specialty services normally generate their revenues from a combination of advertising and subscriber fees.

Speed: Most often described in thousands, millions, billions and trillions of bits per second.

Spectrum: An ordered arrangement of something by degree or according to a particular quality or characteristic. For example, radio waves arranged according to their length are referred to as the radio frequency spectrum (RFS). However, the word can be used in other contexts. A character in Evelyn Waugh's *Brideshead Revisited* describes green chartreuse in the following words. "There are five distinct tastes as it trickles over the tongue. It is like swallowing a sp-spectrum."

SRDU: Satellite Relay Distribution Undertaking.

Stream: Data in the form an encoded text, audio and/or video, requested by a computer user and delivered via the Internet. Hence streaming audio or streaming video.

Streaming: A technique used to speed up the transmission of audio and video over the Internet. This capability has led to the development of such terms as "Internet Radio." Internet Radio is not, strictly speaking, a broadcast from a traditional radio station. There are, however, radio stations that no longer transmit over the airwaves but that do offer programming over the Internet. Radio-Locator (www.radio-locator.com) is perhaps the most comprehensive radio station search engine on the Internet, with links to over 10,000 radio station Web pages and over 2,500 audio streams from radio stations all over the world.

STV: Subscription Television. Off-air retransmitters carrying scrambled signals.

TDR: Transitional Digital Radio.

Terabits: A trillion bits per second. (Approximately three centuries worth of a large daily newspaper.) A substantial research library might be as large as two terabits.

The Last Mile: A phrase in common use to describe the distance between the advanced part of the telecommunications system (usually fibre optic) and the consumer. For consumers who do not have cable "the last mile" is usually copper wire.

Third Generation Wireless (3G Wireless): The next generation of wireless communications that will provide data at rates similar to cable and ASDL. Analogue cellular and digital PCS are considered to be the first and second generations of wireless telecommunications.

Transponder: Equipment on a satellite that receives signals on the uplink, translates them to the downlink frequency and amplifies them for retransmission to earth. The word was created from transmitter and responder.

Video-on-Demand (VOD): A service which will allow consumers to "dial up" programming such as a movie or other program from a central information bank.

APPENDICES

Appendix 6

Advances in Broadcasting Technologies

1880	Paul Nipkow patents the first mechanical television scanning system.
1895	Marconi transmits Morse code by radio.
1897	Karl Ferdinand Braun invents the first cathode-ray tube.
1900	Reginald Fessenden (a Canadian) makes the first radio transmission of voice.
1906	Lee Deforest develops a vacuum tube that can amplify a signal.
1919	The Marconi Company of Canada is awarded Canada's first radio broadcasting licence in Montreal (WXA which later became CFCF).
1924	John Logie Baird transmits a moving image by using a system similar to that developed by Paul Nipkow.
1926	Baird publicly demonstrates mechanical television; an all electronic television system is also demonstrated in the United States.
1928	Baird uses the Nipkow process to obtain a colour television picture; RCA establishes a television station in New York.
1931	Canada's first television station (CKAC) starts broadcasting in Montreal; Ted Rogers Sr. receives a licence to broadcast experimental television from his radio station in Toronto; RCA begins experimental electronic transmissions from the Empire State Building.
1932	The Canadian Radio Broadcasting Commission (CRBC) is created.
1933	A mechanical television system is demonstrated in Eaton's stores in major Canadian cities.
1936	The Canadian Broadcasting Corporation (CBC) is created, replacing the CRBC.
1938	Manufacture of the first all electronic television set.

1939	Display of electronic television at the Canadian National Exhibition in Toronto, the first televised baseball game.
1950	Cable television begins in United States.
1951	First video tape recording is publicly demonstrated.
1952	Cable TV systems begin in Canada. On September 6, CBC broadcasts from Montreal and from September 8 from Toronto.
1953	A microwave network connects CBC stations in Montreal, Ottawa and Toronto. Private television begins in Toronto and Sudbury.
1957	The Soviet Union launches Sputnik. Herbert Kroemer publishes first papers on heterostructures (heterostructures are useful for fibre optic communications, CDs and DVDs). This and related work will later win him the Nobel Prize in physics in 2000. First modern transmission of light through fibre.
1958	CBC microwave network is extended from Victoria to Halifax, becoming the longest in the world.
1959	*Bonanza*, with Canadian Lorne Greene, debuts. By the end of the 1950s most Canadians in large cities can receive between 2 and 5 television stations.
1961	The Canadian Television Network (CTV) begins operations.
1962	The United States launches a television satellite, TELSTAR.
1966	First transmission of colour television signals by Canadian stations.
1969	First television transmission is received from the moon by NASA. By the end of the 1960s Canadians in large cities can receive up to 12 television signals via cable.
1972	Canada's Anik 1, the first domestic geo-synchronous communications satellite is launched.
1975	The first personal computer, Altair, goes on sale.
1980	Development of high definition television (HDTV). By the end of the 1980s Canadians in large cities can receive about 35 television stations via cable.
1982	Canada completes field trial of direct to home television broadcast via satellite (DBS).

1989	Japan initiates the world's first broadcast of 1,125 scanline HDTV programs.
1994	In the United States, DirecTV and USSB begin digitally compressed home satellite services, using an 18-inch dish. The technology becomes the fastest-growing consumer electronic item in history, with 1.1 million subscribers signing up the 1st year.
1995	Sony, Philips, and Toshiba agree on a compromise standard for the next-generation consumer video-playback device, the CD-sized Digital Video Disc. DVD offers picture quality superior to broadcast TV.
1997	Two Canadian direct-to-home (DTH) satellite services, Bell ExpressVu and StarChoice, are launched.
1999	Researchers at Bell Laboratories demonstrate that it is possible to send 160 billion gigabits per second down 300 kilometres of optical fibre using only one wavelength, or colour, of light. They then demonstrate that it is possible to send 1,022 colours of light down a single optic fibre. By the end of the 1990s almost all Canadians can obtain more than 200 televison stations via cable or satellite.
2001	CRTC approves licences for digital radio and television stations.
2002	Citytv becomes Canada's first HDTV broadcaster.

Source:

This table is in part adapted from a Royal Ontario Museum pamphlet: ROM Watching TV: Historic Televisions and Memorabilia from the MZTV Museum. Royal Ontario Museum, 1995.

APPENDICES

Appendix 7

A Brief History of the Internet

1958: The Eisenhower administration creates the Advanced Research Projects Agency (ARPA) in response to the launch of Sputnik by the Soviet Union.

1961: Leonard Kleinrock writes the first paper on the theory of "packet switching." Packet switching eventually becomes the way all data is transmitted over the Internet.

1965: ARPA funds a study on "cooperative network of time sharing computers."

1968: ARPANet is launched. The network consists of four network connections (nodes) at UCLA, Stanford, The University of California, Santa Barbara and the University of Utah.

1971: ARPANet consists of 15 nodes with 23 host computers. Ray Tomlinson develops an e-mail application for ARPANet.

1972: Tomlinson modifies the e-mail program and uses the '@' sign.

1973: The first international connections to ARPANet (London England and Norway).

1974: Launch of a commercial version of ARPANet.

1975: Satellite links across the Pacific and Atlantic oceans (to Hawaii and the United Kingdom).

1980: Tim Berners-Lee creates a program that makes it possible to forge internal connections between files on a network.

1984: Canada begins to connect Canadian universities. Introduction of Domain Name System (DNS).

1985: All Canadians universities are connected to NetNorth.

1986: National Science Foundation (NSF) creates NSFNET with a connection speed of 56 Kbps.

1987: Number of hosts estimated to be more than 10,000.

1988: Canada, Denmark, Finland, France, Iceland, Norway and Sweden connect to NSFNET.

1989: The number of hosts estimated to be more than 100,000.

1990: Tim Berners-Lee creates the World Wide Web. Berners-Lee developed the application to share documents with colleagues. Within a decade it becomes the most important application on the Internet.

1992: Number of hosts estimated to be more than 1,000,000.

1993: Internet talk radio begins.

1995: Government of Canada goes online (canada.gc.ca). Netscape launched.

1998: Canada launches the first national optical Internet — CA*net3.

2000: Size of World Wide Web estimated to be more than 1,000,000,000 pages.

2001: First uncompressed, real time High Definition Television (HDTV) transmission across a wide area Internet Protocol (IP) network takes place.

2002: The number of hosts is estimated to be more than 160,000,000.

APPENDICES

Appendix 8

A Brief History of Canadian Content Policy

1929	The Royal Commission on Radio Broadcasting, chaired by Sir John Aird, submits its report. It recommends some form of public ownership in Canadian broadcasting and says there was "unanimity on one fundamental question — Canadian radio listeners want Canadian broadcasting."
1932	The *Canadian Radio Broadcasting Act* is passed, establishing the Canadian Radio Broadcasting Commission (CRBC). Its mandate is to regulate and control all broadcasting in Canada.
1933	The CRBC issues regulations that place a 40% limit on foreign programs.
1958	The *Broadcasting Act* is passed, creating the Board of Broadcast Governors (BBG), which has the mandate ensure that the broadcasting system is "basically Canadian in content and character."
1959	The BBG announces regulations for television stations, which include quotas for Canadian content. Beginning on 1 April 1961, at least 45% of television stations' broadcast time in any four-week period would have to be "basically Canadian in content and character." As of 1 April 1962, 55% of broadcast time would have to be Canadian. A "Canadian" production is generously defined, and includes any program produced by a licensee, productions made in Canada as well as the broadcast of events taking place outside Canada in which Canadians were participating (e.g. NHL hockey), or which were of special interest to Canadians (e.g. The World Series). Also included are programs produced in Commonwealth countries and programs produced in French-language countries; these receive partial credit.
1961	A committee consisting of representatives from the BBG, the Canadian Broadcasting Corporation (CBC), the Canadian Association of Broadcasters (CAB), and the Department of Transport that was formed to study cable television and its effect on broadcasting makes its report. It says the *Broadcasting Act*'s goal of a service that is basically Canadian in content and in character is not being met and Parliament should intervene.
1962	The BBG amends the television regulations to increase the Canadian content credit given to Commonwealth programs, award partial Canadian content credit

to televisions in which the lip synchronization was done in Canada, and to limit the total time for Canadian content credit programs to one-third of each station's broadcast time. Minimum Canadian content rises to 55% of broadcast hours.

The BBG amends the television regulations to require a minimum of 40% Canadian content in programs carried between 6 p.m. and midnight.

The BBG amends the television regulations to allow a reduction in Canadian content requirements over the summer period (27 May — 13 October) from 55% to 45%.

1963 The BBG amends its television regulations to allow a reduction in Canadian content requirements over the summer period (26 May — 12 October) from 55% to 45% and removes the requirement for 40% Canadian content in programs carried between 6 p.m. and midnight during this period.

The Government of Canada signs its first co-production treaty with a foreign government — France. Co-productions are recognized as Canadian content for broadcast purposes and later for financial support programs.

1964 The BBG amends the television regulations to reduce Canadian content requirements over the summer period (21 June to 30 September) from 55%, to 45%. It also changed the reporting period from any four-week period to each calendar quarter.

The BBG enacts new FM radio regulations that are similar to its AM regulations.

1968 A new *Broadcasting Act* is passed, setting the broadcasting policy for Canada and creating the Canadian Radio-Television Commission (CRTC) to replace the BBG. The CRTC is given special responsibilities to ensure that programming be of high quality with substantial Canadian content.

1969 Canadian television stations are required to fill 55% of their broadcasting day with Canadian content, and 40% of the time between 6 p.m. to midnight; at night Canadian programming is "overwhelmingly news and public affairs," accounting for two-thirds of evening Canadian programming; between 7:30 p.m. and 10:30 p.m., the level of Canadian content is "more like 20 per cent than 40 per cent."

1970 The CRTC introduces new Canadian content regulations for television; from October 1971 to September 1972, 50% of television stations' programming over the full day (6 a.m. — midnight and 6:30 p.m. to 11:30 p.m.) must be Canadian; beginning October 1972, 60% of television stations' programming must be Canadian. The CRTC says it may "deem" to be Canadian any program or series involving agreements for the reciprocal broadcasting of programs, some of which are Canadian; lip-synched programs done in Canada are given a 25% Canadian content credit.

The CRTC introduces new AM radio regulations. Beginning in 1971, stations would be required to meet a quota of Canadian music.

1972 The CRTC eases Canadian content requirements for television — it defines a Canadian program and updates criteria based on Canadian talent and Canadian facilities.

1979 The CRTC (now the Canadian Radio-television and Telecommunications Commission) implements a new FM Policy, first announced in 1975, reducing Canadian content levels.

The Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty, chaired by J.V. Clyne, publishes a report entitled *Telecommunications and Canada*. It recommends the CRTC "introduce a points system for measuring Canadian content combining qualitative, quantitative, and prime-time aspects, without relinquishing the present concept of a minimum quantity, but with strong emphasis on quality."

1982 CRTC licenses the first pay television services (Decision 82-240). Canadian content requirements set by individual conditions of licence.

The CRTC amends the television regulations to relax slightly the time periods for calculating Canadian content.

1983 The CRTC issues its *Policy Statement on Canadian Content in Television* (Public Notice 1983-18). It announces a proposal to introduce a definition for Canadian programming based on a point system, "which would focus primarily on the two observable aspects of any program: performance and production."

1984 The CRTC publishes *Recognition For Canadian Programs*, in which it introduces a 10-point system that is harmonized, but not identical, to the system used by the Canadian Film and Videotape Certification Office of the Department of Communications for feature film productions (Public Notice 1984-94).

The CRTC amends its television regulations: it defines a Canadian program and changes the reporting period for measuring Canadian content from an annual to a semi-annual basis (Public Notices 1984-110 and -247).

1986 The Task Force on Broadcasting Policy, chaired by Gerald Caplan and Florian Sauvageau, submits its report. It recommends a new *Broadcasting Act* to respond to changing conditions and proposes a series of taxes and funding to strengthen Canadian content on television.

The CRTC enacts new cable regulations to replace those in force since 1976. While recognizing the need for a flexible environment, the regulations say Canadian television and audio services must predominate.

The CRTC enacts new radio regulations; these set out broadcasters' minimum requirements for Canadian and musical content.

The CRTC reduces Canadian content requirements for Canadian pay television services.

1987 The CRTC decides not to reduce the Canadian content requirements for country music broadcasters.

The CRTC revises the television regulations and reaffirms the 60% overall and 50% prime time Canadian content requirements that was first spelled out in 1970. It also indicates a greater reliance on conditions of license to fine-tune Canadian content contributions (Public Notice 1987-8).

1988 The House of Commons Standing Committee on Communications and Culture submits its report on broadcasting policy, in which it recommends that a new *Broadcast Act* should encourage the development of Canadian expression.

The CRTC expands the definition of Canadian content to include animation productions.

1990 The CRTC publishes *An FM Policy for the Nineties*; it increases minimum Canadian content levels on most popular music FM stations, from 20%, to 30%, increases stations' flexibility to meet their audiences' needs, and changes the daily limit on advertising from 150 minutes, to 15% of the broadcast week (Public Notice 1990-111).

1991 The *Broadcasting Act* is amended. It says the broadcasting system should: "encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view."

The CRTC amends the 1986 radio regulations: Canadian content levels are applied to both AM and FM (Public Notice 1991-89).

1992 The CRTC publishes "Policies for Community and Campus Radio" (Public Notice 1992-38), which ensures that stations have flexibility while ensuring that they offer a programming alternative.

1993 The CRTC publishes *Changes to the Radio Regulations, 1986 Concerning Canadian Music, French-Language Vocal Music, and Logging Requirements*; the CRTC recognizes as Canadian musical selections where a Canadian collaborates as composer and lyricist with a non-Canadian; reintroduces the 'once Canadian, always Canadian' rule for selections (Public Notice 1993-173).

1998 The CRTC publishes revisions to its commercial radio policy entitled "Commercial Radio Policy 1998" (Public Notice 1998-41). It proposes increasing the required level of Canadian content for popular music selections broadcast each week to 35%, in the hope of bringing about a level of Canadian content that reaches 40% in five years.

1999 The CRTC publishes "Building On Success — A Policy Framework For Canadian Television" (Public Notice 1999-97), which sets out a new regulatory framework to support a financially strong broadcasting system. It says there was consensus that regulation should continue to ensure that licensees exhibit appropriate amounts of priority Canadian programs in the peak viewing periods.

The CRTC publishes "Ethnic Broadcasting Policy" (Public Notice 1999-117),revising its 1985 policy. Ethnic television stations will continue to be required to broadcast the same minimum Canadian content levels as non-ethnic private television stations.

2000 The CRTC publishes "Licensing Framework Policy for New Digital Pay and Specialty Services" (Public Notice 2000-6), which is intended to enhance diversity and choice for viewers.

The CRTC publishes "Campus Radio Policy" (Public Notice 2000-12) and "Community Radio Policy" (Public Notice 2000-13), that propose increasing, from 30% to 35%, the minimum level of Canadian content for Category 2 musical selections that stations are required to broadcast over the broadcast week.

The CRTC revises the definition of a Canadian program (Public Notice CRTC 2000-42).

2002 On 2 April, the Minister of Canadian Heritage, Sheila Copps, launches a review of the definition of Canadian content in film and television production. The review is coordinated by François Macerola, who is expected to report by 31 March 2003.

APPENDICES

Appendix 9
Canadian Television Funding Programs

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Nationally					
Federal Programs					
Canadian Feature Film Fund	To develop a pool of experienced Canadian screenwriters Administered by Telefilm Canada	Screenwriting Assistance Program provides up to $25.2K in non-interest-bearing advances	For professional screenwriters, writers/directors or professional playwrights who are Canadian citizens or permanent residents and are actively working in Canadian film, television or performing arts industry	Feature film treatments and draft screenplays for films of over 75 minutes in length	Non-interest-bearing advances
	To foster the production of high quality Canadian feature films that will achieve box office results Administered by Telefilm Canada	Development, Production and Marketing Programs provide low budget independent feature films of at least 75 minutes in length with financial assistance for development, production and marketing: 60% of eligible costs to a maximum of $150K per project	Must be financially stable, Canadian-controlled corporation with head office based in Canada	Significant Canadian creative elements, including Canadian stories, themes, talent and technicians, which reflect Canadian society and cultural diversity and obtain at least 8/10 CAVCO points	Development, production and marketing programs
		Provides financial assistance for feature film production of up to 49% of budgeted eligible Canadian production costs	Independent producers		Low-budget independent feature film assistance
Canadian Film or Video Production Tax Credit (CPTC)	To encourage Canadian programming and help support an active film industry in Canada CAVCO provides Canadian content recognition and eligible expense estimation; Canada Customs and Revenue Agency collects tax returns	25% of eligible salaries/wages that do not exceed 48% of total production cost (i.e., up to12% of total production cost)	Qualified corporation with permanent establishment in Canada that carries on a Canadian film or video production business and owns the copyright in the film for which a claim is being made	Canadian films or videos	Labour tax credit
Canadian Film or Video Production Tax Services Credit	To make Canada a more attractive place for film production and to stimulate job growth in the Canadian film industry; administered by CAVCO and the Canada Customs and Revenue Agency	25% of qualified labour expenditures up to 48% of production cost	Canadian and foreign-owned companies	Canadian film or video production certified by CAVCO	Labour tax credit
Canadian Television Fund (CTF) *Licence Fee Program* (LFP)	To support the production and broadcast of culturally significant film and television productions; administered by the Canadian Television Fund	Under the Licence Fee Program, applicant receives "top-up" to supplement their Canadian broadcaster cash licence fees, up to 13% of total production budget to max of $2M - $3.25 M (depending on whether regional/Toronto/ Montreal, whether fewer or more than 22 episodes; whether film/MOW or single production)	Project must have "genuine, industry standard, fair market value and non-recoupable" licence from Canadian broadcaster to broadcast production in Canada; broadcaster licence fee must not confer on broadcaster ownership, profit, repayment, recoupment, non-Canadian broadcast rights, non-broadcast rights in the production	Small/medium-sized companies receive bonus (=3% of production budget); productions in French receive bonus (=5% of production budget)	Licence fee 'top-up'

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Canadian Television Funding Programs

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Nationally					
Federal Programs					
Cultural Industries Development Fund	To support Canadian cultural production by financially viable Canadian-owned and controlled firms Administered by the Business Development Bank of Canada	Term loans up to $250/K/year to total of $1M Other financial services		Book, magazine, sound recording, film/video production and multimedia production sectors	Repayable term loans Other financial services
Development Information Program (DIP)	To support Canadian applicants targeting Canadian audiences through print, broadcast, electronic or other media who encourage Canadians' understanding of international development and cooperation issues Administered by CIDA	Contributions ranging from $5-$25K; research and development proposals occasionally considered for contributions ranging from $5K-$15K; program may contribute up to 50% of project costs and up to 10% of broadcast-related costs	Projects must encourage public understanding among Canadians of international development/ cooperation issues, emphasize role/contribution of Canadians in developing countries and countries in transition; focus on at least one of CIDA's development priorities.	Requires firm broadcast guarantee for television and radio broadcast proposals and demonstration of project's financial soundness	Financial contributions
Emerging Filmmaker's Program	To provide opportunity for new filmmaker's in the Atlantic provinces to produce a film	Recoupable advance of up to 49% of total project budget to maximum of $15K	Must be Canadian citizens or permanent residents who live and work in the Atlantic provinces, and who have not produced more than one previous work of the same length	Drama/fiction of no less than 30 and no more than 75 minutes long	Recoupable advance
Telefilm Canada	To increase the broadcast presence of high-quality Canadian television programs in all regions of Canada, in both official languages, created by both the majority and minority official language production sectors and increase employment	Under the Equity Investment Program provides direct cash investments of up to 49% of an eligible production's total costs; may also provide non-interest-bearing advances of up to 50% of eligible costs to maximum of $100K per project or $250K/per production company	Independent and broadcaster-affiliated producers with head office and company's activities based in Canada; requires financial participation by one or more broadcasters of at least 20% (drama) or 15% (other genres); production must be controlled by Canadians, set and shot in Canada	"Culturally significant television and film" productions: drama, children's programming, documentaries, performing arts, variety programming and theatrical feature films that has 10/10 CAVCO points and whose underlying rights are owed by Canadians	Equity investment
Non-governmental Programs					
Bell Broadcast and New Media Fund/ Le fonds de la radiodiffusion et des nouveaux médias de Bell	To support projects which include a new media component as well as a television component.		Work on the new media component must be carried out principally in Ontario or Quebec.	Production financing and financing of linked New Media Projects; television component must be drama, variety, documentary, children's program or educational programming	Grants Licence Fee Top-ups
Bravo!FACT	To provide TV exposure to artists and filmmakers by funding the production of shorts	Juried grant of up to 50% of a project's costs, to a maximum of $25,000	Running time of 6 minutes maximum, new projects only (not works in progress); must qualify as Cancon, must fit in with Bravo! Programming; awardee retains copyright	Dance, music, spoken word, opera, animation, visual arts	Grants
Canadian Independent Film and Video Fund (CIFVF)	To encourage the development of new Canadian drama by Canadian writers, to be produced by independent Canadian producers, primarily for private-sector broadcasters	Up to maximum of $50K for production; up to $10K maximum for development	Provides funding for the development and production of informational, educational and training films, videos and multimedia programs. Funding is available to productions that are in French or English	Development and production of informational, educational, specialty programming and multimedia projects	Grants License fee top-ups

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Nationally					
Non-governmental Programs					
CanWest Western Independent Producers Fund	To enhance the film and television production industry in Western Canada, with $23.9M available over 5 years to qualifying production companies based in Manitoba, Saskatchewan, Alberta and BC	Non-recoupable contributions to production budgets	Restricted to producers with permanent operational bases in BC, Alberta, Saskatchewan or Manitoba, who have investors' letters of commitment covering at least 65% of total budget	Drama, children's, variety and factual programming	Non-recoupable grants
CFRN TV Production Fund	Development, licence fees, equity for Western Canadian Producers (based in Alberta, BC, Saskatchewan or Manitoba)	1M/year (ended August 31, 2002)	Restricted to producers based in BC, Alberta, Saskatchewan or Manitoba		Grants, Loans, License Fees, Equity Investments
COGECO Program Development Fund	To encourage the development of new Canadian drama by Canadian writers to be produced by independent Canadian producers, primarily for private sector broadcasters, in English or French, or preferably in both languages	Development loans for treatment/bible, first/second drafts of up to $200K/year	Open to French and English project by producers only; administered by the Independent Production Fund	Dramatic television series, movies of the week or two-part mini-series for prime-time broadcast in English or French series	Development loans
		Production investments for approximately 5 projects/year, for up to $200K - $250K each		Production investment for MOWs, mini-series and pilots for dramatic series.	Repayable equity production investments
		Interest-free advances to a maximum of $35K/ company; of this, 50% (or $17.5K) is repayable upon commencement of the first film, and fifty percent (50% or $17K) is repayable upon commencement of a second film.		Advances to independent Canadian producers operating a production company in Canada that is majority owned and controlled by Canadians; must have produced at least 3 theatrically released productions or broadcast productions in the last five years, and have at least 3 new feature films in development during the 12 months following the application.	Interest-free advances
CTV Television Inc.	CRTC benefits package for priority programming	Up to 70% of a production's budget advanced as combination of licence fee, licence fee top up, equity investment and distribution advance, negotiated case by case	Canadian independent producers	Drama, documentaries and variety programs; multi-media series	Equity Licence fee top-up Distribution advance
Global Development Fund		Development loans		Drama, documentary, children's, variety	Development loans
The Harold Greenberg Fund (TMN, Viewers Choice Canada, Canal Indigo & Star Choice)	Eligible television series productions	Up to $200K recoupable investment			

Canadian Television Funding Programs

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Available Nationally					
Non-governmental Programs					
	Equity investment funding for feature films and television series	Equity investing of up to $200K provided major funding sources are already in place or under formal review; has licence from Family Channel	Feature films of over 75 minutes in length, with at least 8/10 Cancon points, whose copyright is owned by Canadian corporation or citizen or permanent resident	Intended for children's, youth or family market; originally produced in English	Equity investment
	Family Film Program: To help independent producers make high quality feature films and television series for young Canadians and their families Commitment of $5M over 7 years	Script development funding to a maximum of $65K		Movies suitable for theatrical release	Script development funding
	Equity investment program: To invest in production of quality Canadian dramatic movies	Up to $200K/project, provided major funding sources in place or under formal review; licence fee has been received; available to VCC and TMN for exclusive PPV broadcast window in advance of any other release but theatrical and home video	Canadian producers and production companies with track record in feature-length movies who own the film's copyright	Canadian dramatic movies originally produced in English, longer than 75 minutes, for theatrical release and/or pay television Certified by CAVCO (8/10 points or more)	Equity investment
Independent Production Fund	Supports the production of Canadian television dramatic series, including dramatic series for children, for private sector broadcasters; established by Maclean Hunter Limited in 1991; has capital endowments of over $30 M	No formal maximum or minimum amounts set; investments average between 5% and 10% of production budgets, depending on the size of the budget; maximum paid for a one-hour adult 13-part series generally $450K; half-hour children's programming ranges from $150K-$250K	Qualified independent production companies with private broadcaster broadcast licence;	Dramatic series for prime time telecast and for children, special projects to enhance dramatic series	Equity Grants
The Rogers Cable Network Fund	To support the production of first-run cable network programming in Canada.	Equity financing of up to 15% of the lesser of the total production budget or final cost of eligible projects to a maximum of $250K per project, provided production company owns all rights and options necessary for production, distribution and exploitation in and outside of Canada	Canadian television programs that have broadcast length of at least 30 minutes; guaranteed first window, one-year exclusive fair-market broadcast licence commitment from Canadian specialty programming service; 8/10 Canadian content points	Drama; documentaries; children's programming; educational; instructional; performing arts and variety programming	Equity financing
Rogers Documentary Fund	Provides financial support for Canadian documentary programming in both official languages		Producer must have a commitment from a national Canadian broadcaster to air the program in prime time within 2 years.	Financing for Canadian documentaries with Canadian themes	Grants
Rogers Telefund	To provide financing assistance for the production of quality Canadian television programs through interim or bridge loans	Interim financing for projects with contractually committed production funding that assign producer's copyright interest to Rogers Telefund	Canadian independent producers	Projects of outstanding quality and distinctively Canadian themes	Repayable interim loans
Shaw Television Broadcast Fund / Fonds de télédiffusion Shaw	To support high-quality television programming	Equity financing for up to 15% of production budget provided production is 8/10 points Canadian and worldwide copyright owned by Canadians	Independent Canadian producers with private broadcaster/specialty channel commitment; regional incentive (to max of $50K) for producers in Atlantic Canada	High quality programming for children under 12 years; special project support for non-profit organizations; no sports, news, reporting or actualities programming	Equity Loans for development versioning

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
P.E.I.					
Technology PEI	To stimulate investment and employment in the film, television and new media industry, while promoting PEI	Development loans up to $25K or 33% of development budget Recoupable equity investment up to $200 K Labour rebate of 30% of PEI labour expenses or 15% of eligible total	PEI-based and controlled production companies; equity investment requires firm financial commitments from distributors or broadcasters		Loans Equity investment Labour rebate
Nova Scotia					
Nova Scotia Film Development Corporation	To help finance eligible producers' productions	Up to 33% of production budget to maximum of $200K		Drama, documentary or performance programs suitable for broadcast	Equity investment
Nova Scotia Film Industry Tax Credit	To stimulate investment and employment in NS' film and video industry and to promote Nova Scotia in global markets	Refundable corporate income tax credit of 30-35% of eligible NS labour or 15-17.5% of total production costs, provided 25% or more of NS budget paid to NS residents	Corporations with permanent establishment in NS		Tax credit
Nova Scotia Tourism and Culture Grants to Individuals	To foster artistic excellence and creative expression	Up to $3K in professional development assistance; up to $12K to contribute to new work; up to $5K to assist with direct costs of public presentation of artist's work	For professional Nova Scotian artists in all disciplines and cultural backgrounds		Professional development Creation grants Presentation grants
New Brunswick					
New Brunswick Film	Establish economically stable, viable and vibrant film industry in NB, ensure continuing production of quality NB films, increase film industry employment opportunities for NB residents and increase the international visibility of NB	Non interest-bearing development loans up to 40% of approved budget (up to $35 K for features, mini-series and MOWs; up to $20K for other projects) Equity investments up to 25% of total production budget (up to $300K for dramatic series, mini-series and MOWs; $100 K for documentaries; $75 K for short films) with sufficient recoupment, profit potential and other financing in place	For NB producers working on their own or on co-production projects		Development loan Film tax credit Equity investment
New Brunswick Labour Incentive Film Tax Credit	To encourage the training and hiring of NB film personnel	Maximum of 40% of eligible salaries paid to NB residents, when these are less than 50% of the total costs of production and at least 25% of salaries are paid to NB residents; the credit's value may be included as part of the calculation of a production company's equity in a production			Labour tax credit
Newfoundland & Labrador					
Newfoundland & Labrador Film Development Corporation (NLFDC)	To support productions based in Newfoundland and Labrador	Non-interest bearing equity investment that gives NLFDC perpetual % of production revenues	Nfld-based film and video production companies, excluding individuals and licensed broadcasters	Feature films, TV series/mini-series/specials Excludes news/current affairs, talk shows, sports events, pornography	Equity investment
Retail Sales Tax Exemption		Exemption from the 12% Retail Sales Tax on equipment purchase and rental.	Nfld-based companies who are involved in the production of feature and full-length television films and have the proper tax number	Feature and full-length television film equipment purchase and rental; film stock; video and audio tape; consumables; materials used in set construction and wardrobe and props including picture vehicles destroyed during filing	Retail sales tax exemption

Canadian Television Funding Programs

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Nationally					
Non-governmental Programs					
	Equity investment funding for feature films and television series	Equity investing of up to $200K provided major funding sources are already in place or under formal review; has licence from Family Channel	Feature films of over 75 minutes in length, with at least 8/10 Cancon points, whose copyright is owned by Canadian corporation or citizen or permanent resident	Intended for children's, youth or family market; originally produced in English	Equity investment
	Family Film Program: To help independent producers make high quality feature films and television series for young Canadians and their families. Commitment of $5M over 7 years	Script development funding to a maximum of $65K		Movies suitable for theatrical release	Script development funding
	Equity investment program: To invest in production of quality Canadian dramatic movies	Up to $200K/project, provided major funding sources in place or under formal review; licence fee has been received; available to VCC and TMN for exclusive PPV broadcast window in advance of any other release but theatrical and home video	Canadian producers and production companies with track record in feature-length movies who own the film's copyright	Canadian dramatic movies originally produced in English, longer than 75 minutes, for theatrical release and/or pay television Certified by CAVCO (8/10 points or more)	Equity investment
Independent Production Fund	Supports the production of Canadian television dramatic series, including dramatic series for children, for private sector broadcasters; established by Maclean Hunter Limited in 1991; has capital endowments of over $30 M	No formal maximum or minimum amounts set; investments average between 5% and 10% of production budgets, depending on the size of the budget; maximum paid for a one-hour adult 13-part series generally $450K; half-hour children's programming ranges from $150K-$250K	Qualified independent production companies with private broadcaster broadcast licence.	Dramatic series for prime time telecast and for children, special projects to enhance dramatic series	Equity Grants
The Rogers Cable Network Fund	To support the production of first-run cable network programming in Canada	Equity financing of up to 15% of the lesser of the total production budget or final cost of eligible projects to a maximum of $250K per project, provided production company owns all rights and options necessary for production, distribution and exploitation in and outside of Canada	Canadian television programs that have broadcast length of at least 30 minutes; guaranteed first window, one-year exclusive fair-market broadcast licence commitment from Canadian specialty programming service; 8/10 Canadian content points	Drama; documentaries; children's programming; educational; instructional; performing arts and variety programming	Equity financing
Rogers Documentary Fund	Provides financial support for Canadian documentary programming in both official languages		Producer must have a commitment from a national Canadian broadcaster to air the program in prime time within 2 years.	Financing for Canadian documentaries with Canadian themes	Grants
Rogers Telefund	To provide financing assistance for the production of quality Canadian television programs through interim or bridge loans	Interim financing for projects with contractually committed production funding that assign producer's copyright interest to Rogers Telefund	Canadian independent producers	Projects of outstanding quality and distinctively Canadian themes	Repayable interim loans
Shaw Television Broadcast Fund / Fonds de télédiffusion Shaw	To support high-quality television programming	Equity financing for up to 15% of production budget provided production is 8/10 points Canadian and worldwide copyright owned by Canadians	Independent Canadian producers with private broadcaster/specialty channel commitment; regional incentive (to max of $50K) for producers in Atlantic Canada	High quality programming for children under 12 years; special project support for non-profit organizations; no sports, news, reporting or actualities programming	Equity Loans for development versioning

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
P.E.I.					
Technology PEI	To stimulate investment and employment in the film, television and new media industry, while promoting PEI	Development loans up to $25K or 33% of development budget Recoupable equity investment up to $200 K Labour rebate of 30% of PEI labour expenses or 15% of eligible total	PEI-based and controlled production companies, equity investment requires firm financial commitments from distributors or broadcasters		Loans Equity investment Labour rebate
Nova Scotia					
Nova Scotia Film Development Corporation	To help finance eligible producers' productions	Up to 33% of production budget to maximum of $200K		Drama, documentary or performance programs suitable for broadcast	Equity investment
Nova Scotia Film Industry Tax Credit	To stimulate investment and employment in NS' film and video industry and to promote Nova Scotia in global markets	Refundable corporate income tax credit of 30-35% of eligible NS labour or 15-17.5% of total production costs, provided 25% or more of NS budget paid to NS residents	Corporations with permanent establishment in NS		Tax credit
Nova Scotia Tourism and Culture Grants to Individuals	To foster artistic excellence and creative expression	Up to $3K in professional development assistance; up to $12K to contribute to new work; up to $5K to assist with direct costs of public presentation of artist's work	For professional Nova Scotian artists in all disciplines and cultural backgrounds		Professional development Creation grants Presentation grants
New Brunswick					
New Brunswick Film	Establish economically stable, viable and vibrant film industry in NB, ensure continuing production of quality NB films, increase film industry employment opportunities for NB residents and increase the international visibility of NB	Non interest-bearing development loans up to 40% of approved budget (up to $35 K for features, mini-series and MOWs; up to $20K for other projects) Equity investments up to 25% of total production budget (up to $300K for dramatic series, mini-series and MOWs; $100 K for documentaries; $75 K for short films) with sufficient recoupment, profit potential and other financing in place	For NB producers working on their own or on co-production projects		Development loan Film tax credit Equity investment
New Brunswick Labour Incentive Film Tax Credit	To encourage the training and hiring of NB film personnel	Maximum of 40% of eligible salaries paid to NB residents, when these are less than 50% of the total costs of production and at least 25% of salaries are paid to NB residents; the credit's value may be included as part of the calculation of a production company's equity in a production			Labour tax credit
Newfoundland & Labrador					
Newfoundland & Labrador Film Development Corporation (NLFDC)	To support productions based in Newfoundland and Labrador	Non-interest bearing equity investment that gives NLFDC perpetual % of production revenues	Nfld-based film and video production companies, excluding individuals and licensed broadcasters	Feature films, TV series/mini-series/specials Excludes news/current affairs, talk shows, sports events, pornography	Equity investment
Retail Sales Tax Exemption		Exemption from the 12% Retail Sales Tax on equipment purchase and rental	Nfld-based companies who are involved in the production of feature and full-length television films and have the proper tax number	Feature and full-length television film equipment purchase and rental, film stock, video and audio tape consumables; materials used in set construction and wardrobe and props including picture vehicles destroyed during filing	Retail sales tax exemption

Canadian Television Funding Programs

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
Newfoundland & Labrador					
Newfoundland and Labrador Film and Video Industry Tax Credit	To create economic growth in the province	Refundable provincial Corporate Income Tax credit of 40% of eligible services for a taxation year for each eligible corporation provided at least 25% of the project's salaries and wages are paid to provincial residents.	Corporations with permanent establishments in Nfld that are directly and indirectly controlled by Nfld residents or corporations, with total assets of less than $25 million, including assets of associated corporations and that are primarily in the business of film, television or video production.	Drama, variety, animation, children's programming, music programming, informational series or documentaries in film or television programs, series or videos	Refundable tax credit
Quebec					
La financiere des enterprises culturelles du Quebec (FIDEC)	To make available financing adapted to cultural sector, including film and television production; limited partnership sponsored by public and private funds with capital of $45.5M	Bank guarantee based on product's international sales potential, of up to 40% of the financial structure, to maximum of $5M/project; maximum guarantee for 36 months; maximum of 30% of capital committed by FIDEC in respect of given company	Quebec and foreign companies • in strategic alliances with Quebec company, or • that maintain stable place of business in Quebec and • whose projects generate significant economic spinoffs in Quebec	All film and television productions	Gap financing bank guarantee
		Acquisition of rights to a maximum of $2M per project; maximum of 10% of the capital committed by FIDEC in respect of a given company	Quebec-controlled enterprises only	Audiovisual, sound recording, entertainment and multimedia sectors, or any other business opportunity in the cultural sector	Rights acquisition
Fonds d'investissement de la culture et des communications (FICC)	Venture capital fund for developing or expanding cultural and communications enterprises (sponsored by the Fonds de solitarite des travailleurs du Quebec and the Société des enterprises culturelles du Quebec [SODEC])	Bonds or convertible or non-convertible guaranteed or non-guaranteed debentures to a maximum of $2M; investment equivalent to up to 50% of company's capital stock	Quebec-controlled enterprises only	Performing arts, publishing, sound recording, arts and crafts, audiovisual and multimedia sectors	Equity, quasi-equity or debt investment
Quebec Business Investment Company (Investissement-Quebec)	Tax benefits to investors in film and television industry	Tax benefits of 150% of investment for companies with less that $25M in assets or $125% for companies with assets between $25M - $50M	Investors interested in buying shares from small- or medium-sized companies that have completed at least one film/TV production holding Canadian production visa		Tax benefits
Quebec Refundable Tax Credit Program (SODEC)		33% of labour costs up to 16.67% of production budget; up to 22.5% of French-language feature films and single documentaries production budgets; up to 27.78% of regional (non-Montreal productions; all up to maximum of $2.5M per project	Producer must be Quebec resident or company, expenses must be paid to individuals/companies established in Quebec; co-productions qualify if at least 75% of (Quebec portion of) production costs are spent in Quebec	Features, MOWs, documentaries, children's, live-action, animated and certain variety and magazine programs	Refundable labour tax credit
		Production services tax credit of up to 11% of labour costs; 20% enhancement for animation and special effects	For services rendered in Quebec and paid to taxpayers living in Quebec		Refundable production services tax credit

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
Quebec					
		Additional credit to be added to Quebec content and production services credit for CGI-costs incurred in the province, to maximum of 20.25% of budget and 31% of labour expenses related to service productions' eligible activities	Must be incurred in Quebec		Tax credit for CGI-related costs
Quebec Film and Television Production Tax Credit		Up to 33.3% of labour expenditures on certified film/television programs, up to 50% of eligible production costs (=16.67% of eligible production costs), to maximum of $2.5M per production			Production tax credit
Société de development des enterprises culturelles-Quebec (SODEC)	To enable Quebec television to reach the world and to increase Quebec film's popularity; SODEC has $15M available annually	From 25%-100% of writing and research fees for development and script re-writing, to maximum of $10K-$25K (If SODEC does not invest in production stage, development $ are repayable on SODEC's terms) Theatrical feature films, private sector: up to 35% of budget (max of $1.4M) Theatrical feature films, independent sector: up to 50% of budget (max of $250K) Made-for-TV movies: up to 33.3% of budget (max of $250K) Dramatic films up to 75 minutes: up to 50% of budget (maximum of $120K/project) Documentary series/mini-series: $20K/hour to maximum of $120K/project Dramatic mini-series up to 6 episodes: $10K-$25K/hour to maximum of $60K-$150K/hour	Quebec residents or businesses with head office and principal place of business in Quebec (excludes broadcasters); at least 80% of production and development funding allocated to projects produced in French	Feature films, short- or medium-length dramatic films, documentaries, made-for-TV movies and mini-series	Subsidies Loans Equity investments Marketing and distribution assistance
Le Fonds Harold Greenberg	Sponsored by Canal Indigo	5% of gross revenues of Canal Indigo/year	Up to $50,000 for special events and up to $100,000 for movies	Production investment for French-language movies and special events for pay-for-view	Equity Investment
MaxFACT		$250,000/year	Running time of 6 mins. Maximum, new projects only (no works in progress); must qualify as Cancon; must fit in with MusiMAX programming	To provide TV exposure to Quebec musicians and filmmakers by funding the production of music videos	Juried grant of up to 50% of a project, to a maximum of $15,000
Ontario					
CTV Television Inc./CJOH-TV Development Fund		Loans repayable on first day of principal photography	Applicant must be located within the CJOH-TV broadcast area (Ottawa)		Concept, script development loans Professional development grants
Ontario Arts Council (OAC)	To encourage the creation and production of media arts in Ontario	Assistance for artists' film and video media up to $40K, provided total budget does not exceed $300K	Ontario-based emerging and experienced media artists and organizations	Film or video project in drama, documentary, animation, installation or experimental works	Grants to individual artists
		Assistance for first-time and emerging film and video artists	Ontario-based artists produced their first film/video project		Grants to individual artists

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
Newfoundland & Labrador					
Newfoundland and Labrador Film and Video Industry Tax Credit	To create economic growth in the province	Refundable provincial Corporate Income Tax credit of 40% of eligible services for a taxation year for each eligible corporation provided at least 25% of the project's salaries and wages are paid to provincial residents	Corporations with permanent establishments in Nfld that are directly and indirectly controlled by Nfld residents or corporations, with total assets of less than $25 million, including assets of associated corporations and that are primarily in the business of film, television or video production	Drama, variety, animation, children's programming, music programming, informational series or documentaries in film or television programs, series or videos	Refundable tax credit
Quebec					
La financiere des enterprises culturelles du Quebec (FIDEC)	To make available financing adapted to cultural sector, including film and television production; limited partnership sponsored by public and private funds with capital of $45.5M	Bank guarantee based on product's international sales potential, of up to 40% of the financial structure, to maximum of $5M/project; maximum guarantee for 36 months; maximum of 30% of capital committed by FIDEC in respect of given company	Quebec and foreign companies • in strategic alliances with Quebec company, or • that maintain stable place of business in Quebec and • whose projects generate significant economic spinoffs in Quebec	All film and television productions	Gap financing bank guarantee
		Acquisition of rights to a maximum of $2M per project; maximum of 10% of the capital committed by FIDEC in respect of a given company	Quebec-controlled enterprises only	Audiovisual, sound recording, entertainment and multimedia sectors, or any other business opportunity in the cultural sector	Rights acquisition
Fonds d'investissement de la culture et des communications (FICC)	Venture capital fund for developing or expanding cultural and communications enterprises (sponsored by the Fonds de solitarite des travailleurs du Quebec and the Société des enterprises culturelles du Quebec [SODEC])	Bonds or convertible or non-convertible guaranteed or non-guaranteed debentures to a maximum of $2M; investment equivalent to up to 50% of company's capital stock	Quebec-controlled enterprises only	Performing arts, publishing, sound recording, arts and crafts, audiovisual and multimedia sectors	Equity, quasi-equity or debt investment
Quebec Business Investment Company (Investissement-Quebec)	Tax benefits to investors in film and television industry	Tax benefits of 150% of investment for companies with less that $25M in assets or $125% for companies with assets between $25M - $50M	Investors interested in buying shares from small- or medium-sized companies that have completed at least one film/TV production holding Canadian production visa		Tax benefits
Quebec Refundable Tax Credit Program (SODEC)		33% of labour costs up to 16.67% of production budget; up to 22.5% of French-language feature films and single documentaries production budgets; up to 27.78% of regional (non-Montreal productions; all up to maximum of $2.5M per project	Producer must be Quebec resident or company, expenses must be paid to individuals/companies established in Quebec; co-productions qualify if at least 75% of (Quebec portion of) production costs are spent in Quebec	Features, MOWs, documentaries, children's, live-action, animated and certain variety and magazine programs	Refundable labour tax credit
		Production services tax credit of up to 11% of labour costs; 20% enhancement for animation and special effects	For services rendered in Quebec and paid to taxpayers living in Quebec		Refundable production services tax credit

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
Quebec					
		Additional credit to be added to Quebec content and production services credit for CGI-costs incurred in the province, to maximum of 20.25% of budget and 31% of labour expenses related to service productions' eligible activities	Must be incurred in Quebec		Tax credit for CGI-related costs
Quebec Film and Television Production Tax Credit		Up to 33.3% of labour expenditures on certified film/television programs, up to 50% of eligible production costs (=16.67% of eligible production costs), to maximum of $2.5M per production			Production tax credit
Societé de development des enterprises culturelles-Quebec (SODEC)	To enable Quebec television to reach the world and to increase Quebec film's popularity; SODEC has $15M available annually	From 25%-100% of writing and research fees for development and script re-writing, to maximum of $10K-$25K (If SODEC does not invest in production stage, development $ are repayable on SODEC's terms) Theatrical feature films, private sector: up to 35% of budget (max of $1.4M) Theatrical feature films, independent sector: up to 50% of budget (max of $250K) Made-for-TV movies: up to 33.3% of budget (max of $250K) Dramatic films up to 75 minutes: up to 50% of budget (maximum of $120K/project) Documentary series/mini-series: $20K/hour to maximum of $120K/project Dramatic mini-series up to 6 episodes: $10K-$25K/hour to maximum of $60K-$150K/hour	Quebec residents or businesses with head office and principal place of business in Quebec (excludes broadcasters), at least 80% of production and development funding allocated to projects produced in French	Feature films, short- or medium-length dramatic films, documentaries, made-for-TV movies and mini-series	Subsidies Loans Equity investments Marketing and distribution assistance
Le Fonds Harold Greenberg	Sponsored by Canal Indigo	5% of gross revenues of Canal Indigo/year	Up to $50,000 for special events and up to $100,000 for movies	Production investment for French-language movies and special events for pay-for-view	Equity Investment
MaxFACT		$250,000/year	Running time of 6 mins Maximum, new projects only (no works in progress); must qualify as Cancon; must fit in with MusiMAX programming	To provide TV exposure to Quebec musicians and filmmakers by funding the production of music videos	Juried grant of up to 50% of a project, to a maximum of $15,000
Ontario					
CTV Television Inc./CJOH-TV Development Fund		Loans repayable on first day of principal photography	Applicant must be located within the CJOH-TV broadcast area (Ottawa)		Concept, script development loans Professional development grants
Ontario Arts Council (OAC)	To encourage the creation and production of media arts in Ontario	Assistance for artists' film and video media up to $40K, provided total budget does not exceed $300K	Ontario-based emerging and experienced media artists and organizations	Film or video project in drama, documentary, animation, installation or experimental works	Grants to individual artists
		Assistance for first-time and emerging film and video artists	Ontario-based artists produced their first film/video project		Grants to individual artists

Canadian Television Funding Programs

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
[illegible]					
Ontario					
Ontario Media Development Corporation (OMDC) Tax Credits	To build strategic partnerships among converging cultural media industries	Film and television tax credit of 20% of qualified Ontario labour expenditures in film and television, provided distribution agreement in place and up to 75% of production's eligible costs made in Ontario	Ontario-based Canadian corporations with permanent establishment in Ontario	Film and television productions with 6 to 8 out of 10 Canadian content points	Refundable labour tax credit
		Computer animation and special effects tax credit for 20% of qualified Ontario labour expenditures for digital animation and digital visual effects created in Ontario for film and television productions	Ontario-based Canadian and foreign-controlled corporations	Film and television productions with digital animation or visual effects	Computer animation and special effects tax credit
		Refundable tax credit of 11% of qualified Ontario labour expenditures for eligible film and television productions	Ontario-based Canadian and foreign-controlled corporations with permanent production services establishment in Ontario	Film and television productions	Production services tax credit
		Refundable tax credit of 20% of qualified Ontario expenditures for interactive digital media products created in Ontario	Ontario-based Canadian and foreign-controlled corporations	Interactive digital media products	Interactive digital media tax credit
Ontario Media Development Corporation Partnerships in Training	To support ongoing training opportunities for emerging producers	Provides funding to industry organizations for use in professional development initiatives and networking opportunities for emerging producers	Non-profit Ontario organizations or national organizations offering significant benefits to Ontario filmmakers		
Manitoba					
Manitoba Film and Sound Recording Development Corporation	To foster growth of the Manitoba film and sound recording industries by providing financial and other assistance	Assistance for development budgets of up to 50% of development budget to maximum of $25K		Features, MOWs, documentaries, television series; performing arts and children's programming	Development assistance for television or feature films
		Production financing of up to 20% of eligible production budget or 30% of production budget paid to Manitoba residents or businesses		Fully-developed feature films or television programs	Production financing for television or feature films
		Low budget feature film production finance provides up to 50% of production budget to maximum of $250K, provided total production budget is less than $500K; productions between $300-500K require market trigger		Fully-developed low budget dramatic feature film projects that demonstrate script excellence and risk taking	Low-budget feature film production financing
		Up to 50% of eligible costs to maximum of $1500 for promotional materials expenses			Marketing assistance
Manitoba Film and Video Production Tax Credit		Either 35% of eligible salaries paid to Manitoba residents for eligible or 10% of production costs incurred in Manitoba	Eligible film or videos produced in Manitoba		Refundable labour or production tax credit
Saskatchewan					
CTV Saskatchewan Program Development Fund		$50,000/year	Maximum loan $8,000. Eligible only to Saskatchewan-based independent producers	Development of entertainment and documentary programming for Saskatchewan producers	Development Loans, repayable on first day of principal photography

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Saskatchewan					
Saskatchewan Arts Board	To support creation of new work in any form or development	Up to $20K/individual	Saskatchewan residents who have lived in the province for at least a year	To support the creation of new work in any art form or development and performance of work; study in a formal or informal setting; research in the arts; or travel to attend events or participate in eligible activities	Grants
Saskatchewan Film and Video Development Corporation (SaskFilm)	To encourage the employment and professional development of creative talent in Saskatchewan, as well as the telling of Saskatchewan stories	Development loans of up to 40% of development budget to maximum of $10K (individual project) - $20 K (feature/ series)	Saskatchewan production companies	Development of scripts for film, television and new media projects	Development loans
		Scriptwriter's program	Saskatchewan writers	Funding assistance to prepare treatments, outlines and pitch documents used to secure interest from a producer or production company	Scriptwriting assistance
		Filmmakers' program		Financial assistance to filmmakers to produce films of significant cultural and artistic merit	Film makers' assistance
		Documentary fund	Saskatchewan-based documentary programs	Equity investment in documentary productions that result in significant benefit to the provincial film and video industry	Documentary assistance
		Equity financing	To projects where there is significant benefit to the province's film and television industry		Equity financing
Saskatchewan Film Employment Tax Credit		Fully refundable tax credit of 35% of eligible salaries paid to Saskatchewan residents on eligible film, video and multimedia productions, provided these make up no more than 50% of total eligible productions costs (i.e., 17.5% of total production budget)	Saskatchewan-owned, -controlled and -operated production companies; co-productions encouraged provided Saskatchewan company applies for and receives the credit; at least 25% of salaries and wages must be paid to Saskatchewan resident employees	Television, film, multi-media production in drama, variety, animation, children's, music, educational, information series or documentaries.	Refundable employment tax credit
Sasktel New Media Fund	In Partnership with SaskFilm, to foster the development of new media industry in the province	$800K allocated to SaskFilm			

Canadian Television Funding Programs

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
Ontario					
Ontario Media Development Corporation (OMDC) Tax Credits	To build strategic partnerships among converging cultural media industries	Film and television tax credit of 20% of qualified Ontario labour expenditures in film and television, provided distribution agreement in place and up to 75% of production's eligible costs made in Ontario	Ontario-based Canadian corporations with permanent establishment in Ontario	Film and television productions with 6 to 8 out of 10 Canadian content points	Refundable labour tax credit
		Computer animation and special effects tax credit for 20% of qualified Ontario labour expenditures for digital animation and digital visual effects created in Ontario for film and television productions	Ontario-based Canadian and foreign-controlled corporations	Film and television productions with digital animation or visual effects	Computer animation and special effects tax credit
		Refundable tax credit of 11% of qualified Ontario labour expenditures for eligible film and television productions	Ontario-based Canadian and foreign-controlled corporations with permanent production services establishment in Ontario	Film and television productions	Production services tax credit
		Refundable tax credit of 20% of qualified Ontario expenditures for interactive digital media products created in Ontario	Ontario-based Canadian and foreign-controlled corporations	Interactive digital media products	Interactive digital media tax credit
Ontario Media Development Corporation Partnerships in Training	To support ongoing training opportunities for emerging producers	Provides funding to industry organizations for use in professional development initiatives and networking opportunities for emerging producers	Non-profit Ontario organizations or national organizations offering significant benefits to Ontario filmmakers		
Manitoba					
Manitoba Film and Sound Recording Development Corporation	To foster growth of the Manitoba film and sound recording industries by providing financial and other assistance	Assistance for development budgets of up to 50% of development budget to maximum of $25K		Features, MOWs, documentaries, television series, performing arts and children's programming	Development assistance for television or feature films
		Production financing of up to 20% of eligible production budget or 30% of production budget paid to Manitoba residents or businesses		Fully-developed feature films or television programs	Production financing for television or feature films
		Low budget feature film production finance provides up to 50% of production budget to maximum of $250K, provided total production budget is less than $500K; productions between $300-500K require market trigger		Fully-developed low budget dramatic feature film projects that demonstrate script excellence and risk taking	Low-budget feature film production financing
		Up to 50% of eligible costs to maximum of $1500 for promotional materials expenses			Marketing assistance
Manitoba Film and Video Production Tax Credit		Either 35% of eligible salaries paid to Manitoba residents for eligible or 10% of production costs incurred in Manitoba	Eligible film or videos produced in Manitoba		Refundable labour or production tax credit
Saskatchewan					
CTV Saskatchewan Program Development Fund		$50,000/year	Maximum loan $8,000. Eligible only to Saskatchewan-based independent producers	Development of entertainment and documentary programming for Saskatchewan producers	Development Loans, repayable on first day of principal photography

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
Saskatchewan					
Saskatchewan Arts Board	To support creation of new work in any form or development	Up to $20K/individual	Saskatchewan residents who have lived in the province for at least a year	To support the creation of new work in any art form or development and performance of work; study in a formal or informal setting; research in the arts; or travel to attend events or participate in eligible activities	Grants
Saskatchewan Film and Video Development Corporation (SaskFilm)	To encourage the employment and professional development of creative talent in Saskatchewan, as well as the telling of Saskatchewan stories	Development loans of up to 40% of development budget to maximum of $10K (individual project) - $20 K (feature/ series)	Saskatchewan production companies	Development of scripts for film, television and new media projects	Development loans
		Scriptwriter's program	Saskatchewan writers	Funding assistance to prepare treatments, outlines and pitch documents used to secure interest from a producer or production company	Scriptwriting assistance
		Filmmakers' program		Financial assistance to filmmakers to produce films of significant cultural and artistic merit	Film makers assistance
		Documentary fund	Saskatchewan-based documentary programs	Equity investment in documentary productions that result in significant benefit to the provincial film and video industry	Documentary assistance
		Equity financing	To projects where there is significant benefit to the province's film and television industry		Equity financing
Saskatchewan Film Employment Tax Credit		Fully refundable tax credit of 35% of eligible salaries paid to Saskatchewan residents on eligible film, video and multimedia productions, provided these make up no more than 50% of total eligible productions costs (i.e. 17.5% of total production budget)	Saskatchewan-owned, -controlled and -operated production companies, co-productions encouraged provided Saskatchewan company applies for and receives the credit; at least 25% of salaries and wages must be paid to Saskatchewan resident employees	Television, film, multi-media production in drama, variety, animation, children's, music, educational, information series or documentaries.	Refundable employment tax credit
Sasktel New Media Fund	In Partnership with SaskFilm, to foster the development of new media industry in the province	$800K allocated to SaskFilm			

Canadian Television Funding Programs

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
Alberta					
A-Channel Production Fund	To trigger productions by Alberta-based independent producers by spending $14M over seven years	Recoupable development grants of up to $15K	Alberta independent producers whose businesses are registered in Alberta and whose projects' principal photography takes place in Alberta	Drama, music/dance and variety programs, long-form documentaries	Recoupable development grants
		In return for national broadcast rights, broadcast licence fee as % of production budget	All Canadian writers as long as they have an Alberta producer or co-producer; professional Alberta writers	Drama, music/dance and variety programs, long-form documentaries	Broadcast licence fee
Alberta Cultural Industries Association (ACIA)	To help develop the province's cultural industries $1.9 M funding from Canadian Heritage and Alberta Foundation for the Arts	Guarantee of up to $250K for repayable corporate development loans	Alberta-owned and –operated production companies		Guarantee for repayable corporate development loans
Alberta Film Development Program		Grants of up to 20% of production costs spent in Alberta, to maximum of 10% of total production costs and $500K, provided television projects are supported by broadcast licence	Alberta-based and –controlled companies or co-productions involving those companies	Any program but sports, instructional programs, game shows, news, current affairs programs, reality TV, infomercials and commercials	Grants
Alberta Foundation for the Arts	To support film/video production in Alberta	Grant based on percentage of total production costs, based on 20% of Alberta expenditures and not to exceed 10% of total expenditures, to a maximum of $500K	Alberta-based and –controlled companies or co-productions including such companies, whose main activity is the creation of film/video productions for pubic viewing and who retain at least 75% copyright		Training or career development grants; travel/marketing; research
CFCN Production Fund	To stimulate development and production of made-in-Alberta television programs	Maximum equity of $300K per project		TV drama, comedy, children's documentary and variety/performing arts programming	Professional development grants; development loans payable back on first day of principal photography; equity investments
Telus Television Development Fund	To contribute to development of high-quality Canadian television programming, administered by the Alberta Cultural Industries Association	Interest-free loans of up to $10K to develop television programs	Alberta-based producers	Music, variety, children's comedy or documentaries; preference to stories specific to Alberta	Repayable interest-free loans
BC					
British Columbia Arts Council Project Assistance for Media Artists Program		Production assistance of up to $25K for artists with at least 5 years' experience; up to $10K for less-experienced artists Post-production funding of up to 50% of post-production budget	Independent filmmakers, video or new media artists who live in BC and have completed at least one other professional production; applicants must have final editorial authority over the project	Innovative, experimental and non-industrial film, video and new media projects; animations, documentaries, dramas and experimental works also qualify	Production/post-production assistance
British Columbia Film Markets in Mind Development Program	To contribute to the growth of the indigenous production community in British Columbia	Non-recoupable advance for development funding of up to $30K/project	Independent productions produced in BC by companies that are BC-owned and -controlled		Non-recoupable advance

Fund Name	Mandate	Financial Assistance	Additional information	Type of program	Type of funding
Available Provincially					
BC					
British Columbia Film Feature Film Production Fund		Equity investment to a maximum of $200K/project	BC-owned and –controlled companies with theatrical release commitment from Canadian distributor	Dramatic or animated feature film projects	Equity investment
		BC residents who invest in a venture capital corporation that invests in small-business ventures such as ongoing BC indigenous film productions can obtain a 30% tax credit	BC residents	BC-owned and –controlled film production companies	Investment tax credit
Film Incentive BC	To encourage film and television production in BC	Refundable labour tax credit of up to 20% of eligible labour costs Regional incentive tax credit of up to 12.5% of eligible tax credit for productions outside of Vancouver Training incentive tax credit of lesser of 30% of trainee salaries or 3% of eligible labour costs All eligible labour costs capped at 48% of total production costs	Productions must achieve 6/10 Cancon points At least 75% of total production and post-production costs must be paid to BC residents/companies At least 75% of principal photography days must occur in BC		Refundable labour and training credits
Kick Start	Sponsored by Directors' Guild of Canada, BC District Council and BC Film; to provide emerging BC filmmakers with a 'calling card' film	Each year 5 winning directors assisted in producing 10-minute dramatic film or video, with $12K for production and $2.4K credit towards post-production services	Maximum cash budget of $35K		Cash award
Production Services Tax Credit	To encourage film and television production in BC	Refundable corporate income tax credit equal to 11% of eligible BC labour costs	Any film or production company that incurs qualifying labour expenses in BC with minimum budget of $100K/half hour or $200K/hour long-episode for television, and $1M in all other cases		Refundable corporate income tax credit
Telus BC New Media and Broadcast Fund	Fund to distribute $10M over five years	Interim financing of up to $250K or 25% of production budget, provided independent producer has secured other funding agreements, broadcast licences, distribution agreements and other contracts New media loans and recoupable advances of up to $200K or 45% of project budget	BC-based creative productions with excellent broadcast market potential BC-based new media developers with solid business case 75% of key creative personnel must be BC residents and 75% of total budget must be spent in B C Requires 6/10 Cancon points, and broadcast release in Canada within 2 years of delivery	Original entertainment or educational programming	Interim Financing Loans Recoupable advances
Yukon					
Yukon Film Incentive Program		Rebate of 35% for dedicated Yukon labour Training rebate of 35% for trainee and trainer Travel rebate of up to $15K	Labour rebate applies if Yukon labour content is at least 25% of total person-days on the production's Yukon portion, to a maximum of 50% of total Yukon expenditures Travel rebate applies to up to 50% of travel costs between Vancouver and Whitehorse, to a maximum of $2K/Yukon production day or $15K, provided Yukon labour content is at least 15% of total person days in Yukon portion of production	Feature film, MOWs or dramatic programs; not documentaries	Rebates

Canadian Television Funding Programs

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Alberta Cultural Industries Association (ACIA)	To help develop the province's cultural industries $1.9 M funding from Canadian Heritage and Alberta Foundation for the Arts	Guarantee of up to $250K for repayable corporate development loans	Alberta-owned and –operated production companies		Guarantee for repayable corporate development loans
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CFCN Production Fund	To stimulate development and production of made-in-Alberta television programs	Maximum equity of $300K per project		TV drama, comedy, children's documentary and variety/performing arts programming	Professional development grants; development loans payable back on first day of principal photography; equity investments
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		BC residents who invest in a venture capital corporation that invests in small-business ventures such as ongoing BC indigenous film productions can obtain a 30% tax credit	BC residents	BC-owned and –controlled film production companies	Investment tax credit
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Production Services Tax Credit	To encourage film and television production in BC	Refundable corporate income tax credit equal to 11% of eligible BC labour costs	Any film or production company that incurs qualifying labour expenses in BC with minimum budget of $100K/half hour or $200K/hour long-episode for television, and $1M in all other cases		Refundable corporate income tax credit
Telus BC New Media and Broadcast Fund	Fund to distribute $10M over five years	Interim financing of up to $250K or 25% of production budget, provided independent producer has secured other funding agreements, broadcast licences, distribution agreements and other contracts New media loans and recoupable advances of up to $200K or 45% of project budget	BC-based creative productions with excellent broadcast market potential BC-based new media developers with solid business case 75% of key creative personnel must be BC residents and 75% of total budget must be spent in B.C. Requires 6/10 Cancon points, and broadcast release in Canada within 2 years of delivery	Original entertainment or educational programming	Interim Financing Loans Recoupable advances
Yukon					
Yukon Film Incentive Program		Rebate of 35% for dedicated Yukon labour Training rebate of 35% for trainee and trainer Travel rebate of up to $15K	Labour rebate applies if Yukon labour content is at least 25% of total person-days on the production's Yukon portion, to a maximum of 50% of total Yukon expenditures Travel rebate applies to up to 50% of travel costs between Vancouver and Whitehorse, to a maximum of $2K/Yukon production day or $15K provided Yukon labour content is at least 15% of total person days in Yukon portion of production	Feature film, MOWs or dramatic programs; not documentaries	Rebates

APPENDICES

Appendix 10

Previous Studies of the CBC

1936	The CBC is created by the *Radio Broadcasting Act*
1938	Select Standing Committee reviews the policies of the CBC and issues supportive report
1939	Select Standing Committee reviews the CBC and issues supportive report
1942	Select Standing Committee reviews the CBC and issues report that supports the single national broadcasting system, but is critical of CBC's board and management
1947	Special Parliamentary Committee reports
1950	House Committee on Broadcasting reports
1951	Massey: *Royal Commission on National Development in the Arts, Letters and Sciences*
	Special Committee on Radio Broadcasting
1955	Fowler: *Royal Commission on Broadcasting*
1959	Special Committee of the House of commons reviews broadcasting and the CBC
	BBG forms a consultative committee on public broadcasting (CBC's President, 2 CBC vice-presidents, 5 members of the BBG)
1958	*Broadcasting Act*, 1958
1960	Glassco: *Royal Commission on Government Organization*
1961	Special Committee of the House of Commons reviews broadcasting and the CBC
1963	"Troika" consultative committee appointed to advise Cabinet on general broadcasting matters (heads of the BBG, CBC and CAB)

1965	Fowler: *Advisory Committee on Broadcasting*
1966	*White Paper on Broadcasting*
	Standing Committee on Broadcasting, Films and Assistance to the Arts holds meetings to consider the controversy related to "This Hour Has Seven Days"
1967	Standing Committee on Broadcasting, Films and Assistance to the Arts holds meetings to consider the government's *White Paper on Broadcasting*
1968	*Broadcasting Act*, 1968
	Standing Committee on Broadcasting, Films and Assistance to the Arts holds meetings to consider the information programming carried by CBC's Frenchlanguage service
	CRTC holds hearing to consider CBC's information programming standards related to broadcast of "Air of Death"
1970	Davey committee: *Special Senate Committee on Mass Media*
1974	CRTC holds public hearing to consider renewal of CBC's radio and television licences (Decision CRTC 74-70)
1977	CRTC committee of inquiry into manner in which CBC is fulfilling its mandate as Canada's national broadcasting service
1978	CRTC holds public hearing to renew CBC radio licences
1979	Clyne committee *Report of the Consultative Committee on the Implications of Telecommunications for Canadian Sovereignty*
1982	Applebaum-Hebert: Federal Cultural Policy Review Committee
1983	Federal government: new *Broadcasting Strategy for Canada*
	DOC: *Building for the Future: Towards a Distinctive CBC*
1984	Federal-Provincial Committee on the Future of French-language Television issued report

	Neilsen report: Federal Task Force on Program Review published its recommendations on culture and communications
1986	Caplan-Sauvageau: *Task Force on Broadcasting Policy*
1987	CRTC holds public hearing about the licence renewals of CBC's television networks (Decision CRTC 87-140)
	House of Commons Standing Committee on Communications and Culture releases Fifth Report (27 April) and Sixth Report (4 May 1987)
	CRTC holds public hearing about the licence renewals of CBC's radio networks (Decision CRTC 88-181)
1988	CRTC holds public hearings about the licence renewals of CBC's ownedandoperated television stations
1991	*Broadcasting Act* 1991
	Girard-Peters Task Force: *Report on the Economic Status of Television*
	June — CRTC approves CBC's decisions, in response to budget reductions, to close eleven originating television stations
1992	CRTC holds public hearing to consider the licence renewal of CBC's radio networks (Decision CRTC 93-95)
1994	March 1994 — CRTC licence renewal hearing for television network licences
1995	Parliamentary Standing Committee on Canadian Heritage: *The Future of the Canadian Broadcasting Corporation in the Multi-Channel Universe.*
1996	Juneau Committee: Mandate Review Committee of the CBC, NFB and Telefilm Canada
1999	Parliamentary Standing Committee on Canadian Heritage: "The Committee recognizes the CBC's position at the very heart of cultural expression in Canada." (p. 53)
	CRTC holds public hearing and regional consultations to consider the licence renewal of CBC's networks and stations

2003	Parliamentary Standing Committee on Canadian Heritage issues a report on the state of Canada's broadcasting system

Sources:

CBC, Annual Report, 1985-1986, "Chronology: 1936-1986"; CBC, Annual Report, 2000-2001; CBC, Fact Book, 1989; David Ellis, 1979; Frank Foster, Broadcasting Policy and Development.

APPENDICES

Appendix 11

Other Canadian Broadcasting Services

Ethnic Services

Television

While the CRTC acknowledges the contributions made by community cable channels to ethnic programming, it also licences ethnic television stations as separate entities.[1] The CRTC's 1999 ethnic broadcasting policy provides the framework for such services.[2] It states:

> An ethnic program is one, in any language, that is specifically directed to any culturally or racially distinct group other than one that is Aboriginal Canadian or from France or the British Isles.

Furthermore:

> Ethnic programming may be in English, French, a third-language or a combination of languages. It also includes cross-cultural programming provided, once again, that it is specifically directed to any culturally or racially distinct group other than one that is Aboriginal Canadian or from France or the British Isles.

As noted in Chapter 4, there are at present four over-the-air multilingual ethnic television stations, operating from Toronto (OMNI 1 and OMNI 2), Montreal (CJNT) and Vancouver (MVBC). There are also five analog Canadian ethnic specialty services (available on a discretionary basis): Fairchild TV, Talentvision, SATV, Odyssey and Telelatino. Since 2000, the Commission authorized more than 50 ethnic Category 2 (i.e., digital) specialty and pay services in a variety of languages.[3] Of these, ten (8 specialty and 2 pay) have been launched.[4]

Radio

The CRTC's 1999 ethnic broadcasting policy applies to radio in much the same way it applies to television. For radio, the Commission notes that: "the spoken work component of the program determines the ethnic group being served."[5] At present, there are 13 licenced ethnic radio stations in Canada and a further 19 ethnic radio stations carried by 12 licenced FM stations as Subsidiary Communications Multiplex Operations (SCMO).[6] These stations broadcast programming in dozens of languages. Vancouver's three ethnic stations, for example, air programming in over 40 languages and average (when combined) more than 400 hours of ethnic-language programming each week.[7]

Low-Power Services

Television

To encourage off-air community television operations in areas too small to support a full range of over-the-air or cable services, the CRTC decided in 1987 to grant licences to low-power television stations for operation in remote or underserved communities.[8] The Commission expects low-power television services to:

> … develop community-oriented programming that contributes to the diversity of television services within the community. The Commission also expects operators of such services to serve all members of the community by offering some programs which appeal to everyone, as well as programs which deal with matters of interest to specific groups within the community.

In 2000, there were 20 low-power television services across Canada. Many of these stations rebroadcast the CBC's Northern Television Service and provide a limited amount (typically 2 hours a day) of local programming such as local events, sports, council meetings, church services, bingo and community announcements.[9]

The CRTC licences a number of low-power radio stations as it believes that such:

> … undertakings make a contribution to the goals set out in the *Broadcasting Act* and may attract new entrants into the Canadian broadcasting system. Such services are particularly well-suited to provide local community-based programming.[10]

The Commission's 2002 policy for the allocation of licences uses the following categories:

> Priority A services: 1. Originating conventional not-for-profit radio services (e.g. community, campus and Native); 2. Originating conventional for-profit radio services (private commercial broadcasters including ethnic); 3. Rebroadcasting transmitters of local stations rebroadcasting within the station's contour; 4. Rebroadcasting transmitters of distant signals (the CBC will have priority within this sub-group of Priority A services).

> Priority B services: 1. Not-for-profit public information services (e.g. traffic or weather information services); 2. Commercial announcement services.[11]

Some low power radio stations are Type A or Type B community stations; others are religious, native, campus, tourist or travel. Table 1 profiles English and French language low power stations in Canada.

Francophone Minority Communities

Television

In April 2000, the federal Cabinet issued an Order-in-Council which ordered the CRTC to review French-language broadcasting in minority environments. This review (released in early 2001) provides some information on how Canada's French-language minority communities are faring in today's changing communications environment.

Table 1 shows the overall growth in available French-language television services offered to cable subscribers living outside Quebec since 1985.

TABLE 1 French-language programming services offered outside Quebec (analog, via cable)

	1985	1990	1995	2000
Radio Canada (public)	1	1	1	1
TVA (private)	-	-	-	1
Educational	1	1	1	1
Specialty services	-	2	2	2
Pay/pay-per-view	-	-	-	-
Total	2	4	4	5

Source: Public Notice CRTC 2001-25. 12 February 2001.

It is important to note that about 80% of all Canadian households outside Quebec subscribe to at least basic cable. This table reveals that French-language television channels available to Canadian cable subscribers living outside Quebec more than doubled (from two to five) between 1985 and 2000.[12]

Table 2 shows the situation for direct-to-home satellite subscribers, the fastest growing broadcast distribution platform in Canada today.[11] These data show that DTH subscribers enjoy even greater French-language choice than cable users.

TABLE 2 French-language specialty services offered outside Quebec via DTH, 2001

	French	English
Analog specialty	16	29
Digital specialty (Category 1)	5	16
TOTAL	21	45

Source: Public Notice CRTC 2001-25. 12 February 2001.

All told, the CRTC's review exhibits some optimism and moderate concern for the delivery of French-language television services to francophone minority communities outside Quebec. For example, with regard to analog service provision, it notes that it will "not permit any reduction in the number of French-language services distributed on analog channels in Anglophone markets." Concerning public television, it states that: "all cable systems will be required to distribute at least one CBC signal in each official language." And, with respect to the specialty service, Télé des Arts, it stresses that it must "be made available free of charge to cable distributors who distribute the service on an analogue basis in Anglophone markets."

As for the overall reflection of Francophone minority communities in broadcasting services, the Commission believes that:

> To adequately meet the needs of French linguistic minority communities and better reflect their realities, a number of elements must come together. These include access to more French-language broadcasting services, increased production of quality programming and better reflection in the programs aired by conventional television broadcasters — public and private, educational, specialty and community services — most of which serve the large Francophone market of Quebec.

Radio

As noted above, the CRTC assessed the availability of French-language broadcasting services for Francophone minority communities outside Quebec in 2001. Table 3 shows the situation for private and community-based French-language radio. This table reveals that very few regions outside Quebec have French-language private radio services, while a slightly greater number are served by community radio. Overall, four provinces (British Columbia, Newfoundland and Labrador, Prince Edward Island, Saskatchewan) and two territories (Nunavut, Yukon) have neither private nor community radio outlets.

TABLE 3 French-language specialty services offered outside Quebec, 2001

Province / Territory	Private Radio	Community Radio	Total
Alberta	0	1	1
British Columbia	0	0	0
Manitoba	0	1	1
New Brunswick	4	7	11
Newfoundland and Labrador	0	1	0
Nova Scotia	0	2	2
Ontario	3	4	7
Prince Edward Island	0	0	0
Saskatchewan	0	0	0
Northwest Territories	0	1	1
Nunavut	0	0	0
Yukon	0	0	0
TOTAL	7	17	24

Source: Public Notice CRTC 2001-25. 12 February 2001.

The availability of CBC French radio services outside Quebec is presented in Table 4. As can be seen, the CBC's Première chaîne exceeds 80% availability in most regions outside Quebec, whereas the Chaîne culturelle is virutally inaccessible, except in Ontario and New Brunswick

TABLE 4 French-language specialty services offered outside Quebec via DTH, 2001

Province / Territory	Première chaîne	Chaîne culturelle
Alberta	83.4	-
British Columbia	82.5	-
Manitoba	84.6	-
New Brunswick	95.7	59.9
Newfoundland and Labrador	65.0	-
Nova Scotia	90.4	1.1
Ontario	97.9	59.0
Prince Edward Island	85.4	-
Saskatchewan	74.3	-
Northwest Territories / Nunavut	55.0	-
Yukon	77.8	-

Source: Public Notice CRTC 2001-25. 12 February 2001.

In its assessment of the situation facing French-language radio outside Quebec, the CRTC notes that part of the problem has to do with the allocation and assignment of frequencies, particularly FM frequencies, which are becoming increasingly scarce. For this reason, it has called on Industry Canada to "examine the measures … to increase the number of over-the-air analog and digital radio frequencies available within spectrum." It also believes that in "the current context, the CRTC should continue to ensure that all new frequency allocations constitute the best possible use of those frequencies, in the public interest."

Campus Radio

Campus radio is another category of community radio licenced by the CRTC. These stations are generally associated with post-secondary educational institutions and are expected to be not-for-profit. Volunteers who are either students or members of the community produce most programming.

The Commission's 2000 policy for campus radio stresses that the:

> ... primary objective for the campus radio sector is that it provide programming differing in style and substance from that provided by other elements of the broadcasting system, particularly commercial stations and the Canadian Broadcasting Corporation (CBC). The Commission considers that campus stations should add diversity to the broadcasting system by providing alternative programming in both music and spoken word.[14]

The CRTC views campus radio as being complimentary to commercial and community radio stations operating in the same market. Accordingly, its describes campus radio in the following way:

> A campus radio station is a station owned or controlled by a not-for-profit organization associated with a post-secondary educational institution. There are two types of campus stations:
>
> Community-based campus: This is a campus station with programming produced primarily by volunteers who are either students or members of the community at large. The training of professional broadcasters is not the station's primary objective.
>
> Instructional: This is a campus station that has the training of professional broadcasters as its primary objective.[15]

Campus stations are allowed to broadcast four minutes of advertising per hour. The Commission believes that "this measure will provide campus stations with additional flexibility with respect to their sources of revenue" and is "the best way to ensure that campus stations provide programming that is different in style and substance from that provided by other stations."[16]

In 2002 there were 47 campus stations licenced across Canada of which 38 were community-based and nine were instructional. The major revenue sources for these stations came from the educational institution with which they were associated, advertising, grants, the local community and fund-raising. Table 5 shows the revenues for those campus stations that filed returns with the CRTC between 1996 and 2000.

Table 5 Revenues for Campus Radio Stations, 1997-2001

	1997	1998	1999	2000	2001
Community-Based					
Stations reporting	23	26	29	21	17
Local Advertising	$370,266	$494,412	$736,776	$452,612	$327,364
National Advertising	24,063	53,765	83,510	40,872	38,021
Other Revenues	2,882,213	3,238,828	3,801,269	3,000,631	2,377,475
Total — Revenues	3,276,543	3,919,019	4,621,556	3,494,115	2,742,860
Instructional					
Stations reporting	2	4	5	6	6
Local Advertising	$166,092	$234,453	$151,997	$104,613	$132,611
National Advertising	-	-	-	-	-
Other Revenues	230,951	125,750	178,042	216,713	233,591
Total — Revenues	397,043	360,203	330,039	321,326	366,202

Source: CRTC Broadcasting Policy Monitoring Report 2002

This table reveals that campus radio stations are much less dependent upon advertising than their community radio counterparts, with the majority of revenues coming from other sources, primarily the educational institution with which each campus station is affiliated.

Endnotes

[1] See Public Notice CRTC 1999-117, 16 July 1999, Paragraph 57.

[2] Public Notice CRTC 1999-117, 16 July 1999.

[3] Very few of these new services are operational and may never be unless they can obtain carriage with a service provider (i.e., cable or satellite service) and the associated revenue streams needed to be financially viable.

[4] See the CRTC's Broadcasting Policy Monitoring Report 2002, 14 November 2002.

[5] Public Notice CRTC 1999-117, 16 July 1999, Paragraph 12.

[6] SCMO radio signals are transmitted on a channel that can only be received with a special receiver.

[7] CRTC Broadcasting Policy Monitoring Report 2002.

[8] See Public Notice CRTC 1987-8, 9 January 1987.

[9] The Commission's 1987 low-power policy is updated in Public Notice CRTC 2002-61 (10 October 2002).

[10] Public Notice CRTC 2002-61, 10 October 2002.

[11] Public Notice CRTC 2002-61, 10 October 2002.

[12] Approximately 80% of all.

[13] DTH subscribers accounted for 85% of the increase in total subscriptions to BDUs in 1999. (Public Notice CRTC 2001-25, 12 February 2002, Paragraph 26).

[14] Public Notice 2000-12, 28 January 2000, Paragraph 13.

[15] Public Notice 2000-12, 28 January 2000, Paragraph 20.

[16] Public Notice 2000-12, 28 January 2000, Paragraph 59.

APPENDICES

Appendix 12
Terms of Reference: Ownership Panels

Within the context of its study of the Canadian broadcasting system, the Standing Committee would like panellists to focus on the following questions:

Cross-Media Ownership

1. Cross-media ownership in Canada

    What do recent trends in Canadian media ownership suggest?

    Is it possible to foresee particular changes in the near future?

2. Editorial independence and cross-media ownership

    Does cross-media ownership affect the expression of diverse opinions?

    Have changes in Canadian media ownership affected editorial independence?

3. The economic consequences of cross-media ownership

    Can you provide examples of the economic consequences of cross-media ownership (e.g., over-promotion of products; squeezing out of competitor's products)?

4. Lessons from outside Canada

    Do you foresee a move to de-convergence?

    What lessons are there for Canadian media firms?

    What should the federal government be doing?

    What can the federal government do?

Foreign Ownership

1. What is your view of the existing foreign ownership rules for Canadian media companies?

2. What is your view of the effectiveness of foreign ownership rules in other countries (e.g., the United States, the United Kingdom, France)? What has been the impact of European Union rules on the domestic situation in its member countries?

3. Given the current media ownership situation in Canada, what would justify a relaxation of existing foreign ownership restrictions? What would justify leaving the legislation as it stands?

4. Some witnesses have suggested that it is important to distinguish between carriers and content providers when dealing with limits on foreign ownership. Could you please explain why this distinction is (or is not) important?

5. What would be the consequences for diversity of voices in Canada if foreign ownership rules were relaxed?

6. What would be the consequences for the promotion of Canadian content?

7. What would be the influence on the cost of capital for Canadian firms? (i.e., What is the cost of capital now? What would be the changes to the cost of capital if ownership restrictions were relaxed?)

8. Would jobs be at risk if foreign ownership rules were relaxed?

APPENDICES

Appendix 13

Direction to the CRTC (ineligibility of non-Canadians)[1]

Interpretation

1. The definitions in this section apply in this Direction.

"acquiring corporation" means a corporation referred to in paragraph 17(2)(a) of the Canadian Telecommunications Common Carrier Ownership and Control Regulations as they read on October 25, 1994, registered as SOR/94-667. (acquéreur)

"affiliate corporation" means, in relation to a qualified successor,

(a) a Canadian carrier referred to in subsection 16(2) of the Telecommunications Act or any of its subsidiary corporations;

(b) an acquiring corporation or any of its subsidiary corporations; or

(c) a corporation that controls the corporations referred to in paragraphs (a) and (b), or any of its subsidiary corporations. (société affiliée)"

"Canadian" means

(a) a citizen within the meaning of subsection 2(1) of the Citizenship Act who is ordinarily resident in Canada;

(b) a permanent resident within the meaning of subsection 2(1) of the Immigration Act who is ordinarily resident in Canada and has been ordinarily resident in Canada for not more than one year after the date on which that person first became eligible to apply for Canadian citizenship;

(c) a Canadian government, whether federal, provincial or local, or an agency thereof, subject to the Direction to the CRTC (Ineligibility to Hold Broadcasting Licences);

(d) a corporation without share capital where a majority of its directors are appointed or designated, either by their personal names or by their names of office, by one or more of the following, namely,

(i) a federal or provincial statute or any regulation made thereunder,

(ii) the Governor in Council or the lieutenant governor in council of a province, and

(iii) a minister of the Crown in right of Canada or a province;

(e) a qualified corporation;

(f) a qualified mutual insurance company;

(g) a qualified pension fund society;

(h) a qualified cooperative; or

(i) a qualified successor

(i) for the purpose of holding a broadcasting distribution undertaking licence, or

(ii) for the purpose of beneficially owning, directly or indirectly, 50 per cent or less of all the issued and outstanding voting shares, and 50 per cent or less of the votes, of a qualified corporation that holds a broadcasting licence for a distribution undertaking only. (Canadien)

"control" means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, an agreement or arrangement, the ownership of a corporation or otherwise. (contrôle)

"director" means a person who is a member of the board of directors of a corporation or, where the corporation has no directors, a person performing functions that are similar to the functions performed by directors. (administrateur)

"independent member" means a person who is not an officer or employee of, or a contractor who provides goods or services to, a qualified successor or any of its affiliate corporations, who is not a director of any affiliate corporations of the qualified successor, and in respect of whom there are no considerations that could reasonably be anticipated to interfere with the person's ability to act in the best interests of the qualified successor. (membre indépendant)

"non-Canadian" means a person or entity that is not a Canadian. (non-Canadien)

"qualified cooperative" means a cooperative, not less than 80 per cent of the members of which are Canadians, that is established under an Act of Parliament or under any provincial legislation that relates to the establishment of cooperatives. (coopérative qualifiée)

"qualified corporation" means a corporation incorporated or continued under the laws of Canada or a province, where

(a) the chief executive officer or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and not less than 80 per cent of the directors are Canadians;

(b) in the case of a corporation having share capital, Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 80 per cent of all the issued and outstanding voting shares of the corporation and not less than 80 per cent of the votes; and

(c) in the case of a corporation that is a subsidiary corporation,

  (i) the parent corporation is incorporated or continued under the laws of Canada or a province,

  (ii) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, not less than 66 2/3 per cent of all of the issued and outstanding voting shares of the parent corporation and not less than 66 2/3 per cent of the votes, and

  (iii) the parent corporation or its directors do not exercise control or influence over any programming decisions of the subsidiary corporation where

    (A) Canadians beneficially own and control, directly or indirectly, in the aggregate and otherwise than by way of security only, less than 80 per cent of the issued and outstanding voting shares of the parent corporation and less than 80 per cent of the votes,

    (B) the chief executive officer of the parent corporation or, where the parent corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer is a non-Canadian, or

(C) less than 80 per cent of the directors of the parent corporation are Canadian. (personne morale qualifiée)

"qualified mutual insurance company" means a mutual insurance company, the head office and principal place of business of which are in Canada and not less than 80 per cent of the board of directors and of each committee of the directors of which are Canadians. (société mutuelle d'assurance qualifiée)

"qualified pension fund society" means a pension fund society, not less than 80 per cent of the board of directors of which and of each committee of the directors of which are Canadians, and that is established under An Act to incorporate the Guarantee and Pension Fund Society of the Dominion Bank, S.C. 1887, c. 55, An Act to incorporate the Pension Fund Society of the Bank of Montreal, S.C. 1885, c. 13, the Pension Fund Societies Act, R.S., 1985, c. P-8, or under any provincial legislation that relates to the establishment of pension fund societies. (société de caisse de retraite qualifiée)

"qualified successor" means a corporation referred to in paragraph 17(2)(b) or (c) of the Canadian Telecommunications Common Carrier Ownership and Control Regulations as they read on October 25, 1994, registered as SOR/94-667, incorporated or continued under the laws of Canada or a province and directly controlled by a Canadian carrier referred to in subsection 16(2) of the Telecommunications Act, or by its acquiring corporation, where

(a) the control of the Canadian carrier and its acquiring corporation has remained unchanged since the date of the coming into force of this Direction;

(b) the chief executive officer of the corporation or, where the corporation has no chief executive officer, the person performing functions that are similar to the functions performed by a chief executive officer, and all its directors are Canadians;

(c) all the voting shares of the corporation that are not beneficially owned and controlled by the Canadian carrier or its acquiring corporation are beneficially owned and controlled by Canadians;

(d) in the case of a corporation referred to in subparagraph (i)(ii) of the definition "Canadian", all the voting shares of the qualified corporation that are not beneficially owned by the corporation are beneficially owned and controlled by Canadians;

(e) the corporation operates only in the operating territory of the Canadian carrier;

(f) the corporation does not beneficially own, directly or indirectly, voting shares of a corporation that holds a broadcasting distribution undertaking licence and that operates outside of the operating territory of the Canadian carrier;

(g) the directors of the corporation and its officers have complete and exclusive control over all programming decisions and

(i) at least 33 1/3 per cent of the directors are independent members, and

(ii) a quorum at any meeting of the directors or of any committee of the directors must include at least one independent member; and

(h) no parent corporation or affiliate corporation of the corporation exercises any control or influence over any programming decisions of the corporation. (ayant droit qualifié)

"subsidiary corporation" means a corporation that is controlled by another corporation. (filiale)

"voting share" means a share of any class of shares of a corporation carrying voting rights under all circumstances or by reason of any event that has occurred and is continuing or by reason of a condition that has been fulfilled, and includes

(a) a security that is convertible into such a share at the time a calculation of the percentage of shares owned and controlled by Canadians is made; and

(b) an option or a right to acquire such a share, or the security referred to in paragraph (a), that is exercisable at the time the calculation referred to in that paragraph is made. (action avec droit de vote)

Direction

2. The Canadian Radio-television and Telecommunications Commission is hereby directed that no broadcasting licence may be issued, and no amendments or renewals thereof may be granted, to an applicant that is a non-Canadian.

3. Where the Canadian Radio-television and Telecommunications Commission determines that an applicant is controlled by a non-Canadian, whether on the basis of personal, financial, contractual or business relations or any other considerations relevant to

determining control, other than the beneficial ownership and control of the voting shares of a qualified successor by a Canadian carrier or its acquiring corporation, the applicant is deemed to be a non-Canadian.

Repeal

4. The Direction to the CRTC (Ineligibility of Non-Canadians) is repealed. (SOR 96192)

Coming Into Force

5. This Direction comes into force on April 8, 1997.

Source:

[1] http://www.crtc.gc.ca/eng/LEGAL/NONCANAD.HTM

APPENDICES

Appendix 14

Cross-Media Ownership in Canada

Media Cross-Ownership in Canada — An Overview of Assets and Acquisitions[1]
23 October 2002

Main players	**BCE**	**Quebecor**	**CanWest Global**	**Rogers Communications**
	Michael J. Sabia	Pierre-Karl Péladeau	The Asper Family	Ted Rogers
Medium	**Principal assets**			
Newspapers	• Globe and Mail	• Sun Media Corp. (includes 8 major urban dailies, 7 regional dailies and more than 170 other publications)	• Southam publications (includes 16[2] dailies and more than 100 weekly, monthly and other publications) National Post (100%)	
Magazines	• Report on Business Magazine • Globe Television	• Publicor (merger of Publications TVA and Publicor) Trustmédia (50%)	• Southam publications	• Rogers Publishing: publishes a number of specialized and professional magazines and publications, including: L'Actualité, Maclean's, Flare, Chatelaine.
Internet	• Bell Globemedia Interactive (24 interactive sites) • Sympatico-Lycos Inc. (11 interactive sites) (100%)[3]	• Société Netgraphe (15 interactive sites including the Canoe.ca network)	• Interest in 5 interactive sites including Canada.com, AllCanadianSport.ca, Medbroadcast Corp. Internet Broadcasting Systems, LifeServ Corporation.	• Rogers Publishing manages a number of interactive sites including Moneysense.ca, Bizlink, Electric Library of Canada
Television	• CTV Inc. (25 stations) • TQS[4] • Participation in 17 Canadian pay and specialty channels (including TSN, CTV Newsnet, Discovery Channel, Comedy Network, OLN, Talk tv, ROBTV, RDS, Viewer's Choice, Canal Évasion, ARTV, WTSN, CTV Travel, Animal Planet, Discovery Civilization Channel, ESPN Classic, NFL Network) • 6 stations affiliated with the CBC	• TVA (10 stations) • Participation of the TVA group in several analog and digital specialty channels, including LCN, Canal évasion and Canal indigo • Home Shopping Service (50%) • Other regional networks	• Global Television Network (11 stations) • Participation in several digital and analog pay and specialty channels, including Prime TV, Men TV, Lonestar, Fox Sportsworld Canada, Xtreme Sports, Mystery, and Deja View • Holds shares in 5 television networks in Australia (1), New Zealand (2), and Ireland (2) • Owns 3 independent television stations • Owns two stations affiliated with the CBC	• Participation in several pay and specialty channels: The Shopping Channel, Rogers Sportsnet, CPAC, Viewer's Choice, Mystery, MSNBC, Tech TV, The Biography Channel, and Outdoor Life • Owns CFMT Television
Network	• Bell Canada (telephony and Internet) • Bell Nexxia (broadband network) (83.5%) • Bell ExpressVu (satellite TV) • Bell Actimedia (Internet access provider) • Téléglobe Inc. (international communications and e-business)[5] • Atlantic Satellite Network (cable satellite broadcasting services) • Look communications (multipoint distribution system) • Other regional telephony and Internet access companies	• Vidéotron Groupe (cable operators and Internet access) • Vidéotron Télécom Limité (Internet and telephony)		• Rogers Cable Inc. (basic and digital cable operator (includes several regional networks), broadband network, video rentals and Internet access) • Rogers Telecom Inc.

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23 October 2002

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Medium	**Principal assets**			
Newspapers	• Globe and Mail	• Sun Media Corp. (includes 8 major urban dailies, 7 regional dailies and more than 170 other publications)	• Southam publications (includes 16 dailies and more than 100 weekly, monthly and other publications) National Post (100%)	
Magazines	• Report on Business Magazine • Globe Television	• Publicor (merger of Publications TVA and Publicor) Trustmedia (50%)	• Southam publications	• Rogers Publishing: publishes a number of specialized and professional magazines and publications, including L'Actualite, Maclean's, Flare, Chatelaine
Internet	• Bell Globemedia interactive (24 interactive sites) • Sympatico-Lycos Inc. (11 interactive sites) (100%)	• Societe Netgraphe (15 interactive sites including the Canoe.ca network)	• Interest in 5 interactive sites including Canada.com, AllCanadianSport.ca, Medbroadcast Corp., Internet Broadcasting Systems, LifeServ Corporation	• Rogers Publishing manages a number of interactive sites including Moneysense.ca, Bizink, Electric Library of Canada
Television	• CTV Inc. (25 stations) • TQS[2] • Participation in 17 Canadian pay and specialty channels (including TSN, CTV Newsnet, Discovery Channel, Comedy Network, OLN, Talk tv, ROBTV, RDS, Viewer's Choice, Canal Evasion, ARTV, WTSN, CTV Travel, Animal Planet, Discovery Civilization Channel, ESPN Classic, NFL Network) • 6 stations affiliated with the CBC	• TVA (10 stations) • Participation of the TVA group in several analog and digital specialty channels, including LCN, Canal évasion and Canal indigo • Home Shopping Service (50%) • Other regional networks	• Global Television Network (11 stations) • Participation in several digital and analog pay and specialty channels, including Prime TV, Men TV, Lonestar, Fox Sportsworld Canada, Xtreme Sports, Mystery, and Deja View • Holds shares in 5 television networks in Australia (1), New Zealand (2), and Ireland (2) • Owns 3 independent television stations • Owns two stations affiliated with the CBC	• Participation in several pay and specialty channels: The Shopping Channel, Rogers Sportsnet, CPAC, Viewer's Choice, Mystery, MSNBC, Tech TV, The Biography Channel, and Outdoor Life • Owns CFMT Television
Network	• Bell Canada (telephony and Internet) • Bell Nexxia (broadband network) (83.5%) • Bell ExpressVu (satellite TV) • Bell Actimedia (Internet access provider) • Téléglobe Inc. (international communications and e-business) • Atlantic Satellite Network (cable satellite broadcasting services) • Look communications (multipoint distribution system) • Other regional telephony and Internet access companies	• Vidéotron Groupe (cable operators and Internet access) • Vidéotron Télécom Limite (Internet and telephony)		• Rogers Cable Inc. (basic and digital cable operator (includes several regional networks), broadband network, video rentals and Internet access) • Rogers Telecom Inc.

Wireless	• Bell Mobility	• Participation in Microcell		• Rogers AT&T wireless communications
e-Commerce	• BCE Emergis	• Nurun Netgraphe Progisia informatique		
Other	• Dome Productions Inc • Artisan Entertainment • Exploration Distribution Inc and Exploration Production Inc • Command Post and Transfer Corporations • Agincourt Productions Inc • CTV Music • BCE Investments	• Quebecor World Inc • Sale of music, books and videos • Distribution houses • Radiomedia and CFOM FM[6] (pending) • JPL production • TVA International	• 3 production services companies • 3 media marketing companies • 6 international production and distribution companies	• Rogers Broadcasting (43 operating licences for AM and FM radio stations) • Toronto Blue Jays • Toronto Phantoms, Arena Football League • Astral Media (7.19%)

1 Several points need to be made about the ownership structures depicted in the following chart. First, ownership structures can be very complicated, making it difficult to generalize and draw conclusions applicable to all broadcasting firms. It is possible, however, to say that since the 1991 revision of the Broadcasting Act, there has been a growth in the number and variety of CRTC licensees. Also since 1991, the CRTC's apparently greater tolerance of concentration, vertical integration and cross-media ownership has led to more complicated ownership structures.

2 In July 2002, CanWest Global sold off a dozen community papers and 32 other publications. GTC Transcontinental Group is the new owner of these publications.

3 BCE bought back from Lycos its 29% share in the company.

4 Télévision Quatre-Saisons (TQS) network is owned by a joint enterprise made up of a BCE subsidiary (Bell Globemedia Inc.) and Cogeco. Bell Globemedia Inc. owns 40% of the shares.

5 In April 2002, BCE announced that it would no longer provide financing for Téléglobe. A few days later, Téléglobe sought protection from its creditors under the Bankruptcy Act.

6 Bought by TVA and Radio-nord Communications Inc. in September 2002. TVA has 60% of the shares.

Wireless	• Bell Mobility	• Participation in Microcell		• Rogers AT&T wireless communications
e-Commerce	• BCE Emergis	• Nurun Netgraphe Progisia informatique		
Other	• Dome Productions Inc. • Artisan Entertainment • Exploration Distribution Inc and Exploration Production Inc • Command Post and Transfer Corporations • Agincourt Productions Inc • CTV Music • BCE Investments	• Quebecor World Inc. • Sale of music, books and videos • Distribution houses • Radiomédia and CFOM FM[6] (pending) • JPL production • TVA International	• 3 production services companies • 3 media marketing companies • 6 international production and distribution companies	• Rogers Broadcasting (43 operating licences for AM and FM radio stations) • Toronto Blue Jays • Toronto Phantoms, Arena Football League • Astral Media (7.19%)

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6 Bought by TVA and Radio-nord Communications Inc. in September 2002. TVA has 60% of the shares.

APPENDICES

Appendix 15

Terms of Reference: Diversity Panels

In its 1999 Report, *A Sense of Place — A Sense of Being*, the Standing Committee on Canadian Heritage noted that there are literally hundreds of definitions of culture, from the sociological and the anthropological, to the aesthetic.

Given this, Members would like the panelists, within the context of its study of the Canadian broadcasting system, to address the following questions:

1. What is your definition of culture?
2. What is your definition of diversity?
3. What is your definition of cultural diversity?
4. What is working? What is not working?
5. What lessons can be learned from the popularity of grey and black-market satellite systems in Canada (estimated to be more than 700,000 households)? Does this phenomenon suggest an insufficient diversity of choice?
6. Is there such thing as too little or too much diversity?
7. Is the federal government's approach to cultural diversity appropriate? Can you recommend any policy or programming changes?

APPENDICES

Appendix 16

Political Activity Questionnaire (UK)

Source: The Commissioner for Public *Appointments Code of Practice for Ministerial Appointments to Public Bodies*, Office of the Commissioner for Public Appointments, July 2001, www.ocpa.gov.uk/leaflets/codeofpractice.pdf

All applicants for a public appointment should complete the question below.

This question is asked for two reasons:

- it enables the monitoring of political activity of candidates for a public appointment in so far as it is already in the public domain. Neither activity nor affiliation is a criterion for appointment (except where statute dictates specific representation);
- involvement in political activities enables individuals to gain and to demonstrate skills and experiences they may not otherwise have obtained. You may be asked about these if they are relevant to your application.

If you are successful, the information provided will be published with the announcement of your appointment.

Please indicate which of the following activities you have undertaken during the past five years by ticking the appropriate box and by providing details of your involvement. Name the party or body for which you have been active. If you have been or are an Independent or have sought or obtained office as a representative of a particular interest group, you should state this. You should tick all relevant categories.

a. Obtained office as a Local Councillor, MP, MEP etc. Stood as a candidate for one of the above offices
Spoken on behalf of a party or candidate

b. Acted as a political agent
Held office such as Chair, Treasurer or Secretary of a local branch of a party
Canvassed on behalf of a party or helped at elections
Undertaken any other political activity which you consider relevant

c. Made a recordable donation to a political party[1]

d. None of the above activities apply

Details of involvement:

Name of Party for which activity undertaken:

NAME...SIGNATURE...

DATE...

Endnotes

[1] The Political Parties, Elections and Referendums Act 2000 requires the Electoral Commission to publish a register of recordable donations (donations from any individual totalling more than £5,000 in any calendar year, or more than £1,000 if made to a subsidiary accounting unit such as a constituency association, local branch, women's or youth organisation). These provisions became effective from 16 February 2001.

APPENDICES

Appendix 17

Source List for Figures

Throughout its study the Committee frequently asked industry stakeholders and representatives to provide statistical data, special runs of proprietary datasets and other information, as required. The Committee was very pleased by the cooperative spirit of these individuals and groups and would like to thank, in particular:

Mr. Leo Doyle (Department of Canadian Heritage)
Mr. David Goldstein (Canadian Association of Broadcasters)
Mr. Ken Goldstein (Communications Management Inc.)
Ms. Sandra Macdonald (Canadian Television Fund)
Mr. Peter Miller (CHUM Television)
Mr. Shaun Poulter (CBC Government Relations)
Mr. Paul Sparkes (Bell Globemedia)
Mr. Stan Staple (CBC Research)
Mr. John Traversy (CRTC)
Mr. Alan Zimmermann (Department of Canadian Heritage)

This appendix lists the sources used to generate the figures found in this Report. As indicated in Chapter 4, the Bureau of Broadcast Measument (BBM), Nielsen Media Research and Statistics Canada are the main organizations that collect Canadian broadcasting data, particularly audience data. For this reason, many of the citations listed below are, in fact, secondary sources, given that the primary data source would likely have been one of the above-mentioned organizations.

Chapter 3

- Figures 3.1 through Figure 3.10: Created by Gibson Product Design. Ottawa.
- Figure 3.3 : Statistics Canada (various years) *Household facilities and equipment*, Catalogue 64-202 Annual; Catalogue 64-202S (various years): *Revised Estimates* (1977-1987); Statistics Canada (various years); *Household Facilities by Income and Other Characteristics*, Catalogue 13-218-XPB; Statistics Canada (various years) *Survey of Household Spending*, Catalogue 62M0004XCB.; CRTC, 1976-1981 *Industry Statistics and Financial Summaries, Canada, Regions-Provinces: Cable.*; CRTC, 1977-1982 *Industry Statistics and Financial Summaries, Canada, Regions-Provinces: Cable.*; CRTC, *Cable Television Statistical and Financial Summaries*, 1979-1984: *Canada, Regions and Provinces/Canada, regions et provinces*; CCTA *Annual Report* 2001-2002.

Chapter 4

- Figure 4.1: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.2: BBM Fall Survey, 2001.
- Figure 4.3: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.4: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.5: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.6: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.7: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.8: CBC Research. Ottawa.
- Figure 4.9: CBC Research. Ottawa.
- Figure 4.10: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.11: CBC Research. Ottawa.
- Figure 4.12: CBC Research. Ottawa.
- Figure 4.13: CBC Research. Note: Global television has only in recent years been classified as a national network, and therefore comparable data are not available for the time series used in this figure.
- Figure 4.14: CBC Research. Ottawa.
- Figure 4.15: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.16: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.17: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.18: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.19: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.20: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.21: CBC Research. Ottawa.
- Figure 4.22: CBC Research. Ottawa.
- Figure 4.23: CBC Research. Ottawa.
- Figure 4.24: CBC Research. Ottawa.
- Figure 4.25: CBC Research. Ottawa.
- Figure 4.26: CBC Research Ottawa; Report of the Task Force on Broadcasting, 1984.
- Figure 4.27: CBC Research. Ottawa.
- Figure 4.28: CRTC, Broadcasting Policy Monitoring Report, 2002.
- Figure 4.29: www.nua.com
- Figure 4.30: CBC Research. Ottawa.
- Figure 4.31: CBC Research. Ottawa.
- Figure 4.32: Environics Research Group, March 2000.
- Figure 4.33: Environics Research Group, March 2000.
- Figure 4.34: Environics Research Group, March 2000.
- Figure 4.35: Environics Research Group, March 2000.
- Figure 4.36: Environics Research Group, March 2000.
- Figure 4.37: Edison Media Research.
- Figure 4.38: Nielsen/Net Ratings.
- Figure 4.39: www.google.ca/press/zeitgeist.html
- Figure 4.40: www.google.ca/press/zeitgeist.html

Chapter 5

- Figure 5.1: www.pch.gc.ca.
- Figure 5.2: CRTC Public Notices and Decisions. Note: The Canadian content requirement varies depending on the service. Most service providers are required to offer at least 30% Canadian content. Third language services, for example, tend to have lower Canadian content requirements.
- Figure 5.3: www.canadiantelevisionfund.ca
- Figure 5.4: Telefilm Canada, TVA, TQS, CBC estimates, SECOR estimates. SECOR, "A Review of Canadian Content in the Canadian Television System", Presented to the Canadian Association of Broadcasters –: Television Board," 30 August 2002, , p.26.
- Figure 5.5: Canadian Television Fund, 2001-2002, A Year in Canadian Television.
- Figure 5.6: Canadian Television Fund, 2001-2002, A Year in Canadian Television.
- Figure 5.7: Canadian Television Fund, 2001-2002, A Year in Canadian Television.
- Figure 5.8: Canadian Television Fund, 2001-2002, A Year in Canadian Television.
- Figure 5.9: Canadian Television Fund, 2001-2002, A Year in Canadian Television.
- Figure 5.10: Library of Parliament, Parliamentary Research Branch. Ottawa.

Chapter 6

- Figure 6.1: OECD (U.S. dollar figures converted to Canadian dollars).
- Figure 6.2: CBC 2001-2002 Annual Report.
- Figure 6.3: CBC Annual Reports.
- Figure 6.4: CBC 2001-2002 Annual Report.
- Figure 6.5: CBC Research. Ottawa.
- Figure 6.6: CBC Research. Ottawa.
- Figure 6.7: CBC Research. Ottawa.
- Figure 6.8: CBC Research. Ottawa.
- Figure 6.9: CBC Research. Ottawa.
- Figure 6.10: CBC Research. Ottawa.
- Figure 6.11: CBC Research. Ottawa.
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Commissioned Research Reports

- Peter Desbarats. "The Future of Public Broadcasting - Distinction or Extinction." 30 August 2002.
- David Keeble, Keeble Consulting. "Creating and Distributing Canadian Content Through the Digital Transition." 22 October 2002.
- David Keeble, Keeble Consulting. "The Digital Future of Television: A technology primer and implications for the future." 4 June 2002.
- Catherine Murray, Simon Fraser University. "More Money Blues: Review of Financial Support for Canadian Television Production." 31 August 2002.
- Richard J. Paradis. *Le Groupe CIC*. "Study on Broadcasting Regulatory Activities." 15 January 2003.
- Richard J. Schultz, McGill University. "The Operation and the Effectiveness of the Canadian Radio-television and Telecommunications Commission." 12 September 2002.
- *Centre d'études sur les médias*. "Media Ownership in Canada." 5 February 2003.

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Appendix 19

The Research and Support Team

The report of a Committee of the House of Commons is a quasi-judicial process involving witness testimony collected in public hearings, site visits and research and analysis written or gathered by staff working for the Parliamentary Research Branch (Library of Parliament) and outside consultants. Employees of the House of Commons and Public Works and Government Service Canada also provide support to the study process, as required.

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Joseph Jackson

Senior Consultant
David M. Black

Parliamentary Research Branch

Analysts
Sam Banks
Monique Hébert
Terrence Thomas

Research Assistants
Michael Dewing

Interns
Alan Cofman
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Gaston Blais
Alan Cofman
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David Black
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David Keeble

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Scott Gibson
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Sean Thomson

Professional Advisors
Keith Fagan
David Keeble
David Moynagh

Clerk of the Committee
Christine Fisher

Administrative Assistants
Nélia DaSilva
Julie Danis

Production

Josée Bigras
Chantal Laprade
Guy Rochon
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English to French
Suzanne Boileau
Cécile Fortier
Michel Gouin
Frèdelin Leroux
Isabelle Rivard

French to English
Elizabeth Cowan
Patricia Galbraith
Françoise Karczewski

Visual Information Design

Gibson Product Design
Scott Gibson
Sean Thomson

Travel Logistics Officer
Richard Ménard

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List of Witnesses

Associations and Individuals	Date	Meeting
37th Parliament, 1st Session		
Department of Canadian Heritage	08/11/2001	26
Sheila Copps, Minister		
Marc O'Sullivan, Director General, Broadcasting Policy and Innovation		
Michael Wernick, Assistant Deputy Minister, Cultural Affairs		
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Marc O'Sullivan, Director General, Broadcasting Policy and Innovation		
Michael Wernick, Assistant Deputy Minister, Cultural Affairs		
Department of Industry		
Michael Helm, Director General, Telecommunications Policy Branch		
Veena Rawat, Deputy Director General, Spectrum Planning and Engineering		
Léonard St-Aubin, Senior Director, Business and Regulatory Analysis		
Paul Vaccani, Director, Broadcast Application Engineering		
Canadian Radio-television and Telecommunications Commission	22/11/2001	28
Jean-Pierre Blais, Executive Director		
David Colville, Chairman		
Andrée Wylie, Vice-Chair		
Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)	27/11/2001	29
Garry Neil, Policy Advisor		

Canadian Independent Film and Video Fund		
Robin Jackson, Executive Director		
Canadian Media Guild		
Lise Lareau, President		
Canadian Television Fund	27/11/2001	29
Louise Baillargeon, Vice-President		
Richard Stursberg, Chairman of the Board		
Janet Yale, Vice-President		
Newspaper Guild of Canada		
Arnold Amber, Director		
Shaw Children's Programming Initiative		
Alex Park, Vice-President		
Canadian Audiovisual Certification Office	29/11/2001	31
Robert Soucy, Director		
Canadian Radio-television and Telecommunications Commission		
Jean-Pierre Blais, Executive Director		
Friends of Canadian Broadcasting		
Noreen Golfman, Chair		
Ian Morrison, Spokesperson		
National Film Board		
Jacques Bensimon, Government Film Commissioner and Chairperson		
Laurie Jones, Director of Communications		
Telefilm Canada		
François Macerola, Executive Director		
Johanne St-Arnauld, Acting Executive Director		
Toronto Arts Council		
Jim Garrard, Executive Director		
Canadian Association of Black Journalists	04/12/2001	32
Sam Donkoh, Vice-President		

Canadian Association of the Deaf		
James Roots, Executive Director		
Canadian Broadcast Standards Council	04/12/2001	32
Ronald Cohen, National Chair		
Ann Mainville Neeson, Executive Director		
Department of Finance		
Len Farber, General Director, Legislation		
Ed Short, Senior Officer, Tax Policy Branch		
MediaWatch		
Melanie Cishecki, Executive Director		
REAL Women of Canada		
Gwendolyn Landolt, National Vice-President		
Diane Watts, Researcher		
Canadian Association of Internet Providers	31/01/2002	35
Jay Thomson, President		
Communications Research Centre Canada		
Metin Akgun, Acting Vice-President, Broadcast Technology Branch		
Gérald Chouinard, Program Manager		
Gerry Turcotte, President		
Digital Radio Roll-Out Inc.		
Ray Carnovale, Secretary		
David Garforth, Executive Director		
Duff Roman, President		
Canadian Cable Television Association	19/02/2002	36
Janet Yale, President and Chief Executive Officer		
COGECO Inc.		
Yves Mayrand, Vice-President, Legal Affairs and Secretary		
Rogers Communications Inc.		
Dean MacDonald, Senior Vice-President		

Shaw Communications Inc.		
Ken Stein, Senior Vice-President		
WestMan Communications Group	19/02/2002	36
Dave Baxter, President		

Vancouver, British Columbia

ATW Management Communications Inc.	25/02/2002	37
Shyla Dutt, President		
Communications, Energy and Paperworkers Union of Canada		
Arthur Simmonds, National Representative		
Joie Warnock, National Representative		
Community Media Education Society		
Richard Ward, Executive Director		
Vancouver Association of Chinese Canadians		
Sid Chow Tan, Vice-President		
Victor Wong, Executive Director		
As individual		
Digby Peers		
CKVU — TV / CHUM Television	25/02/2002	38
Prem Gill, Director of Public Affairs and Multi-cultural Programming		
Focus on the Family		
Michael Martens, Representative		
Darrel Reid, President		
Vancouver Raging Grannies		
Ann Kujundzic, Representative		
Kitanna Nuttall, Representative		
Robyn Smith, Representative		
Barbara Taylor, Representative		
Lesia Voth, Representative		

Alberta Motion Picture Industries Association	27/02/2002	39
Connie Edwards, President		
Nic Wry, Broadcasting Committee Chair		
"Association canadienne-française de l'Alberta"	27/02/2002	39
Raymond Lamoureux, Executive Director		
Canadian Learning Television		
Jill Bonenfant, Director		
Communications, Energy and Paperworkers Union of Canada		
Nancy Wahl, President		
Richard Zyp, Representative		
As Individuals		
Kathryn Fraser		
John Grogan		
Helen Neufeld		
Brian Staples		

Regina, Saskatchewan

Access Communications	28/02/2002	40
Jim Deane, President and CEO		
Marj Gavigan, Manager		
"Assemblée communautaire fransaskoise"		
Denis Desgagné, Executive Director		
Francine Lacasse-Powers, Communications Officer		
Saskatchewan Motion Picture Association		
Cindy Beland, President and CEO		
Michael Snook, Board Member		
As Individuals		
Merran Proctor		
Alan Taylor		

Winnipeg, Manitoba

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Jim Compton, Program Director
Clayton Gordon, Chairman
Deanie Kolybabi, Director
Ron Nadeau, Chief Operating Officer
Patrick Tourigny, Director

CanWest Global Communications Corp

Leonard Asper, President and CEO
Charlotte Bell, Vice-President
Kenneth Goldstein, Executive Vice-President and Chief Strategy Officer
Ken MacDonald, Vice-President
Gerry Noble, President

Craig Broadcast Systems Inc.

Greg Ashley, Vice-President
Boyd Craig, Vice-President
Drew Craig, President

Saskatchewan Communications Network

David Debono, President and CEO
Richard Gustin, Executive Director of Programming

"Société franco-manitobaine"

Daniel Boucher, President and Executive Director

Ottawa, Ontario

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Ian Hembery, Vice-President

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Robert Rabinovitch, President and CEO		
Carole Taylor, Chair		
Michel Tremblay, Vice-President		
"Alliance des radios communautaires du Canada"	19/03/2002	44
Robert Boulay, Development Officer		
Serge Paquin, Secretary General		
"Association des radiodiffuseurs communautaires du Québec"		
Jean-Pierre Bédard, President		
Lucie Gagnon, Secretary General		
"Corporation de Télédiffusion du Grand Châteauguay inc."		
André Desrochers, Coordinator		
André Simard, Secretary		
"Fédération des télévisions communautaires autonomes du Québec"		
André Desrochers, Administrator		
Gérald Gauthier, Research and Development Officer		
Stéphane Lépine, Vice-President		
"Fondation Radio Enfant"		
Aline Bard, Member		
Michel Delorme, Director General		
Lise Huot, Member		
Star Ray TV		
Jan Pachul, President		
As Individuals		
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Alain Gourd, Group Executive Vice-President		

Canadian Association of Broadcasters

Richard Cavanaugh, Vice-President

Sylvie Courtemanche, Executive Vice-President

Glenn O'Farrell, President and Chief Executive Officer

Erica Redler, General Counsel and Senior VicePresident

Paul Robertson, Chair

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Kenneth Goldstein, Executive Vice-President and Chief Strategy Officer

CFRA / KOOL-FM (CHUM Limited)

Mark Maheu, Vice-President and General Manager

CHUM Television

Sarah Crawford, Vice-President

Peter Miller, Vice-President

Corus Entertainment Inc.

J.J. Johnston, General Manager and Vice-President

Kathleen McNair, Vice-President

Craig Broadcast Systems Inc.

Joanne Levy, Executive Director

Global Television Network

Loren Mawhinney, Vice-President

"Groupe TVA inc."

Philippe Lapointe, Vice-President

KICX 104 FM

Paul Larche, President and General Manager

Mid West Television Ltd

Glenda Spenrath, Vice-President

"Télé Inter-Rives Ltée (CKRT-TV)"

Marc Simard, Chairman of the Board

Télémédia

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Christian Martel, President		
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Georges Arès, President		
Richard Barrette, Director General		
Robin Cantin, Communications Director		
Office of the Commissioner of Official Languages		
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Ian Gavaghan, Vice-President		
David McLennan, President		
Canadian Media Guild		
Lise Lareau, President		
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Arnold Amber, Director		
Telesat Canada		
Paul Bush, Vice-President, Corporate Development		
Bob Power, Director		
"Association des producteurs de films et de télévision du Québec (APFTQ)"	16/04/2002	50
Céline Pelletier, Communications Director		
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Lise Lachapelle, Director General		
Jean-Pierre Lefebvre, President		
"Association québécoise de l'industrie du disque, du spectacle et de la vidéo"	16/04/2002	50
Martine Corriveau, Research Officer		
Solange Drouin, Public Affairs Vice-President and Director General		
Jacques Primeau, President		
Annie Provencher, Public Affairs Analyst		
Canadian Association of Film Distributors & Exporters		
Richard Paradis, President		
"Impératif français"		
Andrée Caya, Chairman Assistant		
Léo La Brie, Advisor		
Claude Lafrenière, Member of the Board		
Jean-Paul Perreault, President		
"Société des auteurs de radio, télévision et cinéma"		
Yves Légaré, Director General		
Annie Piérard, President		
"Société professionnelle des auteurs et des compositeurs du Québec"		
Francine Bertrand Venne, Director General		
Marc Ouellette, President		
"Union des artistes"		
Pierre Curzi, President		
Anne-Marie Des Roches, Public Affairs Director		
Association of Canadian Advertisers	18/04/2002	52
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Canadian Media Directors Council		
Sunni Boot, Past President		

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Sunni Boot, Vice-Chair		
Cathy Loblaw, President and CEO		
Patti Manna, Director		
Linda Millar, Director		
Institute of Communications and Advertising		
David Harrison, Member		
Media Awareness Network		
Jan D'Arcy, Co-Director		
Alan Mirabelli, Vice-Chair		
Canadian Conference of the Arts	23/04/2002	53
Marie Cadieux, Board Member		
Megan Williams, National Director		
Canadian Race Relations Foundation		
Karen Mock, Executive Director		
Christian Communications Consultants		
Patrick Bestall, President		
Don Brooks, Secretary		
Communications and Diversity Network		
Reuben Friedman, Member		
Lionel Lumb, Member		
Raj Rasalingam, President		
"Congrès Ibéroaméricain du Canada"		
Paul Fitzgerald, Vice-President and Legal Counsel		
Evangelical Fellowship of Canada (The)		
Bruce Clemenger, Director		
As Individual		
Joe Clark		
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Jacques Lagacé, Director		
Claude Morin, Multimedia Advisor		
TFO — TV Ontario		
Laurent de Combrughe, Director General		
Louis Paquin, President		
Claudette Paquin, Managing Director		
Vision TV		
Bill Roberts, President and CEO		

St. John's, Newfoundland

CHMR-FM	29/04/2002	55
Ernst Rollmann, Program Director		
Michael Rossiter, News Director		
Eastern Edge Gallery		
Mike Hickey, Representative		
Government of Newfoundland and Labrador		
Eleanor Dawson, Cultural Officer		
Heather MacLellan, Assistant Deputy Minister, Tourism, Culture and Recreation		
Music Industry Association of Newfoundland		
Anita Best, Chair		
John Hutton, Associate		
New Democratic Party of Newfoundland and Labrador		
Jack Harris, MHA, Leader		
Newfoundland and Labrador Film Development Corporation		
Leo Furey, President		

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Susan Knight, Founder and Artistic Director		
Producers Association of Newfoundland and Labrador		
Ken Pittmen, Director		
Paul Pope, Vice-President		
St. John's Folk Arts Council		
Stan Pickett, Treasurer		
St. John's International Women's Film and Video Festival		
Katie Nicholson, Spokesperson		
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Greg Malone, Actor		
Jim Maunder, Visual artist		
Monique Tobin		

Halifax, Nova Scotia

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Catherine Martin, Filmmaker		
Aboriginal Voices Radio Inc.		
Melvin Augustine, Owner		
Norma Augustine, Educator		
Gary Farmer, President		
Mark MacLeod, Director		
Collideascope Entertainment		
Stephen Comeau, President		
Directors Guild of Canada		
Mark Laing, Chairperson		
East West Media		
Richard Zurawski, President		
Nova Scotia Film & Television Producers Association		
Sonya Jampolsky, President		

University of King's College	30/04/2002	56
Stephen Kimber, Director and Associate Professor of Journalism		
Bruce Wark, Associate Professor of Journalism		
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Jean Léger, Executive Director		
IMX Communications		
Chris Zimmer, President		

Charlottetown, Prince Edward Island

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Gretha Rose, President		
Communications, Energy and Paperworkers Union of Canada		
Steve Stapleton, President		
Dan Viau, President		
Legislative Assembly of Prince Edward Island		
Wes MacAleer, MLA		
"Société Saint-Thomas d'Aquin"		
Maria Bernard, President		
Dominic Langlois, Liaison Officer		

Moncton, New Brunswick

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Roger Ouellette, President		
CJSE Radio		
Gilles Arsenault, Director		
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Daniel Levesque, Coordinator		
Rogers Cable Inc.		
Pierre Fortin, Regional Manager		
Ken Marshall, Vice-President and General Manager		
Christiane Vaillancourt, Municipal Industry and Community Relations		
Julie Vaillancourt, Manager		
"Société des acadiens et acadiennes du Nouveau-Brunswick"		
Jean-Marie Pitre		
Robert Thibeault, President		
As Individuals		
Maxim Atanassov		
Patrick Flanagan		
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Ottawa, Ontario

BCE — Bell Canada Enterprises	07/05/2002	61
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Alain Gourd, Executive Vice-President		
Sheridan Scott, Chief Regulatory Officer		
Competition Bureau		
Gwillym Allen, Senior Economist and Policy Advisor		
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Thor Bishopric, Member		
Rupert Brendon, President		
Garry Neil, Policy Advisor		
Robert Reaume, Vice-President		
Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)		
Thor Bishopric, President		
Garry Neil, Policy Advisor		
R.H. Thomson, Actor, writer and broadcaster		
Canadian Film and Television Production Association		
Stephen Ellis, Chairman of the Board		
Julia Keatley, Executive Producer		
Ira Levy, Board member		
Elizabeth McDonald, President and Chief Executive Officer		
Canadian Independent Film Caucus		
Barri Cohen, National Chair		
Sandy Crawley, Executive Director		
Andrea Nemtin, Executive Board Member		
ProMedia International Inc.		
Hamlin Grange, President		
Cynthia Reyes, Vice-President		
Canadian Independent Record Production Association	21/05/2002	64
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Douglas Frith, President		
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Canadian Recording Industry Association		
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Michael Sullivan, National Representative		
"Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique"		
Bernard Chabot, Member, "Syndicat des employés de TVA-Québec (CUPE local 2252)"		
Jacques Denommé, Vice-President, Cable television, Communication Provincial Council (CUPE)		
Armand Dubois, Member		
Réal Leboeuf, President, "Syndicat des employés de TVA-Montréal (CUPE local 687)"		
Jacqueline Turgeon, President, Communication Provincial Council (CUPE)		
Directors Guild of Canada		
Pamela Brand, National Executive Director		
Alan Goluboff, President		
Peter Grant, Partner		
Independent Film & Video Alliance		
Peter Sandmark, National Director		
Society of Composers, Authors and Music Publishers of Canada		
Alexina Louie, Classical Music Composer		
Paul Spurgeon, Vice-President		
Gilles Valiquette, President		
Writers' Guild of Canada		
Jefferson Lewis, Vice-President		
Jim McKee, Director of Policy and Communications		
Maureen Parker, Executive Director		
Keeble Consulting	22/05/2002	65
David Keeble, Consultant		
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Priscilla de Villiers, Special Advisor		
Scott Newark, Special Counsel		

"Société civile des auteurs multimédia (SCAM), Société des auteurs et compositeurs dramatiques (SACD)"		
Benoit Clermont, Lawyer for SACD/SCAM		
Luc Dionne, President		
Elisabeth Schlittler, "Déléguée générale" for Canada		
As Individual		
Valerie Smith, Community Activist		

37th Parliament — 2nd Session
Canadian Broadcasting System

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Deanie Kolybabi, Director		
As Individuals		
Bart Beaty, Assistant Professor		
John Meisel, Professor Emeritus		
Karim Karim, Associate Professor		
Kirk Lapointe, Journalist		
Rebecca Sullivan, Assistant Professor		
Will Straw, Associate Professor		
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Bernard Courtois, Executive Counsel		
Alain Gourd, Executive Vice-President		
Canadian Film and Television Production Association		
Guy Mayson, Senior Vice-President, Operations and Membership Services		
Elizabeth McDonald, President and Chief Executive Officer		
CanWest Global Communications Corp.	26/11/2002	5
Geoffrey Elliot, Vice-President		
Kenneth Goldstein, Executive Vice-President & Chief Strategy Officer		

Friends of Canadian Broadcasting		
Ian Morrison, Spokesperson		
As Individuals		
Marc-François Bernier, Professor		
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Catherine Ann Martin, Secretary		
Canadian Broadcasting Corporation		
Cathie Bolstad, Regional Director		
Peter Skinner, Program Manager		
Inuit Broadcasting Corporation		
Debbie Brisebois, Executive Director		
Paul Quassa, Senior Producer		
Inuvialuit Communications Society		
Wendy Smith, Executive Director		
James Bay Cree Communications Society		
Raymond Menarick, President		
Native Communications Incorporated		
Dave McLeod, Executive Director		
Native Communications Society of the Western N.W.T.		
Elizabeth Sabet-Biscaye, Executive Director		
Northern Native Broadcasting, Yukon		
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COGECO Inc.		
Louis Audet, President and Chief Executive Officer		
Friends of Canadian Broadcasting		
Ian Morrison, Spokesperson		
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John Tory, President and Chief Executive Officer		
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Claire Samson, President, Director General		
"Association québécoise de l'industrie du disque, du spectacle et de la vidéo" (ADISQ)		
Solange Drouin, Vice-President to Public Affairs et Director General		
Communications, Energy and Paperworkers Union of Canada		
Martin Mittelstaedt, President		
Peter Murdoch, Vice-President, Media		
"Société professionnelle des auteurs et des compositeurs du Québec"		
Francine Bertrand-Venne, Director General		
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Anne-Marie Des Roches, Public Affairs Director		
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Astral Media Inc.		
André Bureau, Chairman of the Board		
Canadian Media Guild		
Lise Lareau, President		

CHUM Television		
Peter Miller, Vice-President		
Coalition Against Satellite Signal Theft		
Elizabeth McDonald, President and CEO, Canadian Film and Television Production Association		
Luc Perreault, Chair		
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Newspaper Guild of Canada		
Arnold Amber, Director		
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John Miller, Professor, Director of Newspaper Journalism		
Tom Kent, Fellow		
Wilson Southam, Past Director, Southam Inc.		
Canadian Conference of the Arts	10/12/2002	11
Megan Williams, National Director		
Glennie Stamnes Strategy		
Dean Butler, Director, Media Services, and President, Vancouver Media Directors Council		
"La Fédération nationale des communications"		
Chantal Larouche, President		
Pierre Roger, General secretary		
"TéléCentre Drummondville"		
Michel Morin, President of the Board and Information Director		
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Gaëtan Tremblay, Professor, Communications		
Paul Boin, Assistant Professor, Communication Studies		
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Charles Dalfen, Chairman		
William Howard, Senior Legal Counsel		
Jacques Langlois, Director General		

Coalition for Cultural Diversity

Robert Pilon, Executive Vice-President

Competition Bureau

Dennis Corriveau, Senior Competition Law Officer

Sally Southey, Assistant Commissioner, Communications

Konrad von Finckenstein, Commissioner of Competition

Ann Wallwork, Commissioner's Special Advisor

Department of Canadian Heritage

Denny Gélinas, Director General

Barbara Motzney, Director

International Network for Cultural Diversity

Garry Neil, Coordinator

Sectoral Advisory Group on International Trade (SAGIT) for Cultural Industries

Ken Stein, Chair, SAGIT for Cultural Industries
and Vice-President, Corporate and
Regulatory Affairs Shaw Communications

As Individuals

Ivan Bernier, Professor, Law Faculty, Université Laval

Peter Grant, Senior Partner, McCarthy Tétreault

37th Parliament — 1st Session
Bill C-48, *An Act to Amend the Copyright Act*

Department of Canadian Heritage

Michael Himsl, Senior Policy Analyst

Jeff Richstone, Legal Counsel

Bruce Stockfish, Director General

Michael Wernick, Associate Deputy Minister 29/05/2002 68

Department of Industry

Bruce Couchman, Senior Legal Analyst

Michèle Gervais, Director

Anna Marie Labelle, Senior Counsel

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Sylvie Courtemanche, Executive Vice-President		
David Goldstein, Vice-President		
Glenn O'Farrell, President and Chief Executive Officer		
Erica Redler, General Counsel and Senior Vice-President		
Canadian Association of Internet Providers		
Jay Thomson, President		
Canadian Cable Television Association		
Gerald (Jay) Kerr-Wilson, Senior Counsel		
Janet Yale, President and Chief Executive Officer		
National Association of Broadcasters (U.S.)		
Ben Ivins, Senior Associate General Counsel		
Society of Composers, Authors and Music Publishers of Canada		
Paul Spurgeon, Vice-President		
Canadian Film and Television Production Association	04/06/2002	70
Beatrice Raffoul, Vice-President		
Stephen Stohn, Chair		
Canadian Motion Picture Distributors Association	04/06/2002	70
Douglas Frith, President		
Susan Peacock, Vice-President		
Canadian Recording Industry Association		
Brian Robertson, President		
Ken Thompson, Vice-President and General Counsel		
JUMP TV		
Sunny Handa, Legal Counsel		
Farrell Miller, President		
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Gregory Piasetzki, Legal Counsel		
National Football League		
Jeff Pash, Executive Vice-President and General Counsel		

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William Daly, Executive Vice-President and Chief Legal Officer		
Douglas Perlman, Senior Vice-President		
Danara Software Systems		
Dan O'Hara, Senior technical architect		
Department of Canadian Heritage		
Denis Gratton, Manager		
Michael Himsl, Senior Policy Analyst		
Jeff Richstone, Legal Counsel		
Bruce Stockfish, Director General		
Department of Industry		
Bruce Couchman, Senior Legal Analyst		
Michèle Gervais, Director		
Anna Marie Labelle, Senior Counsel		
National Research Council Canada		
Larry Korba, Group Leader		
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Michael Himsl, Senior Policy Analyst		
Jeff Richstone, Legal Counsel		
Bruce Stockfish, Director General		
Department of Industry		
Bruce Couchman, Senior Legal Analyst		
Michèle Gervais, Director		
Anna Marie Labelle, Senior Counsel		
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Denis Gratton, Manager		
Michael Himsl, Senior Policy Analyst		
Jeff Richstone, Legal Counsel		
Bruce Stockfish, Director General		

Department of Industry

Elizabeth Britt, Senior Counsel

Michèle Gervais, Director

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Canadian Association of Broadcasters	10/04/2002	48
Sylvie Courtemanche, Executive Vice-President		
David Goldstein, Vice-President		
Canadian Cable Television Association		
Nick Masciantonio, Director, Government Relations		
Elizabeth Roscoe, Senior Vice-President, External Affairs		
CRTC		
Jean-Pierre Blais, Executive Director, Broadcasting		
Allan Rosenzveig, General Counsel		
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Mario Lepage, Counsel		
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APPENDICES

Appendix 21

List of Briefs

37th Parliament, 1st Session

Aboriginal Peoples Television Network

Alliance Atlantis Communications Inc.

"Alliance des radios communautaires du Canada"

Alliance for Canadian Advertising Tax Credits

Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)

AOL Time Warner Inc.

"Assemblée communautaire fransaskoise"

"Association canadienne-française de l'Alberta"

"Association canadienne-française de l'Ontario"

"Association des radiodiffuseurs communautaires du Québec"

"Association des radios communautaires acadiennes du Nouveau-Brunswick"

Association of Canadian Advertisers

"Association québécoise de l'industrie du disque, du spectacle et de la vidéo"

Astral Media Inc.

BCE — Bell Canada Enterprises

Wilson Blair

Paul Boin

Canada Family Action Coalition

Canadian Actors' Equity Association

Canadian Association of Black Journalists

Canadian Association of Broadcasters

Canadian Association of Internet Providers

Canadian Association of the Deaf

Canadian Audiovisual Certification Office

Canadian Broadcast Standards Council

Canadian Broadcasting Corporation

Canadian Cable Television Association

Canadian Conference of the Arts

Canadian Ethnocultural Council

Canadian Film and Television Production Association

Canadian Independent Film and Video Fund

Canadian Independent Film Caucus

Canadian Independent Record Production Association

Canadian International DX Club

Canadian Media Guild and the Newspaper Guild Canada

Canadian Motion Picture Distributors Association

Canadian Press/Broadcast News (The)

Canadian Race Relations Foundation

Canadian Radio-television and Telecommunications Commission

Canadian Recording Industry Association

Canadian Television Fund

CanWest Global Communications Corp.

"Centre de recherche et d'expertise en journalisme"

Centre for Research-Action on Race Relations

Raynald Charest

Christian Communications Consultants

CHUM Limited

CJSE Radio

Joe Clark

COGECO Inc.

Communications and Diversity Network

Communications Research Centre Canada

Communications, Energy and Paperworkers Union of Canada

Community Media Education Society

Competition Bureau

Concerned Children's Advertisers

"Confédération des syndicats nationaux"

"Congrès Ibéroaméricain du Canada"

"Conseil provincial du secteur des communications du Syndicat canadien de la fonction publique"

"Coopérative Radiophonique de Toronto"

"Corporation de Télédiffusion du Grand Châteauguay inc."

Corus Entertainment Inc.

Craig Broadcast Systems Inc.

Patrick Crawley

Roger Davies

Digital Bliss Inc.

Digital Radio Roll-Out Inc.

Alison Dinwoodie

Directors Guild of Canada

Shyla Dutt

Catherine Edwards

"Fédération des communautés francophones et acadienne du Canada"

"Fédération des francophones de la Colombie-Britannique"

"Fédération des télévisions communautaires autonomes du Québec"

"Fédération nationale des communications"

Filmmakers' Association of Visible and Ethnic Minorities

First Nations Independent Producers

Focus on the Family

Friends of Canadian Broadcasting

Mack Furlong

Jean-Robert Gauthier (senator)

"Impératif français"

Independent Film & Video Alliance

Media Awareness Network

MediaWatch

"Mouvement des Intervenants et Intervenantes en Communications Radio de l'Ontario"

National Film Board

Neil Craig Associates

Office for Victims of Crime

Open Learning Agency

ProMedia International Inc.

Radio Canada International

Ravens and Eagles Productions Ltd.

REAL Women of Canada

"Réseau francophone d'Amérique (Le)"

Rogers Communications Inc.

Saskatchewan Communications Network

Andrew Schuck

Valerie Smith

"Société des auteurs et compositeurs dramatiques/Société civile des auteurs multimédia"

Society of Composers, Authors and Music Publishers of Canada

Squamish Nation

St. John's Folk Arts Council

Telefilm Canada

Telesat Canada

Toronto Arts Council

Torstar Corporation

TV Ontario

Vancouver Association of Chinese Canadians

Vision TV

Women for Life, Faith and Family

Writers' Guild of Canada

37th Parliament, 1st Session

Bill C-48, *An Act to Amend the Copyright Act*

Aliant Telecom Inc.

Canadian Association of Broadcasters

Canadian Cable Television Association

Canadian Motion Picture Distributors Association

FWS Joint Sports Claimants Inc.

National Association of Broadcasters (U.S.)

National Hockey League

37th Parliament, 1st Session

Bill S-7, *An Act to Amend the Broadcasting Act*

Bell Globemedia Inc.

Canadian Association of Broadcasters

37th Parliament, 2nd Session

Canadian Broadcasting System

Aboriginal Peoples Television Network

Graeme Anning

Marc-François Bernier

Paul Boin

Canadian Cable Television Association

Canadian Development Institute

Canadian Forces Personnel Support Agency

CanWest Global Communications Corp.

Circuit

Coalition Against Satellite Signal Theft

"Fédération nationale des communications"

Green Lion Productions Inc.

Inuit Broadcasting Corporation

Inuvialuit Communications Society

Christopher Maule

Nunavut Department of Culture, Language, Elders and Youth

Our Public Airwaves

SaskFilm and Video Development Corporation

Squamish Nation

"TéléCentre Drummondville"

Gaëtan Tremblay

Wawatay Native Communications Society

APPENDICES

Appendix 22

Site Visits

February 5, 2002

TORONTO, ON

CHUM Television
229 Queen St. W.

ROGERS Communications Inc.
855 York Mills Rd

VISION TV
80 Bond St.

CORUS Entertainment
32 Atlantic Ave

February 6, 2002

TORONTO, ON

CBC
250 Front St. W.

BellGlobemedia
9 Channel Nine Court, Agincourt

February 7, 2002

MONTRÉAL, QC

Radio-Canada
1400 René-Lévesque Boul.

National Film Board
1564 St-Denis

February, 26, 2002

VANCOUVER, BC

BCTV/Global
7850 Enterprise St., Burnaby

CBC
700 Hamilton Street

February 27, 2002

EDMONTON, AB

Craig Broadcast Systems A-Channel
10212 Jasper Avenue

February 28, 2002

REGINA, SK

Rawlco Communications
2401 Saskatchewan Drive

Access Communications
2250 Park Street

CBC
2440 Broad Street

March 1, 2002

WINNIPEG, MB

Aboriginal Peoples Television Network (APTN)
339 Portage Avenue

CBC
541 Portage Avenue

Global Specialty Broadcast Centre
Suite 2100, 1 Lombard Place

April 29, 2002

ST. JOHN'S, NF

Rogers Television Studios
58 Kenmore Road
Woodgate Plaza

April 30, 2002

HALIFAX, NS

CBC
1840 Bell Road, 5600 Sackville Street

Collideascope
5212 Sackville Street, Suite 400

Citadel Productions
1583 Hollis Street

Digital Bliss
1583 Hollis Street

May 2, 2002

MONCTON, NB

Rogers Atlantic
70 Assumption Boulevard

May 3, 2002

MONTRÉAL, QC

Astral Media Broadcast Centre
1616, boul. René Lévesque O.
Suite 300

Mix 96 — CHAD and CHOM Radio
1411, rue du Fort

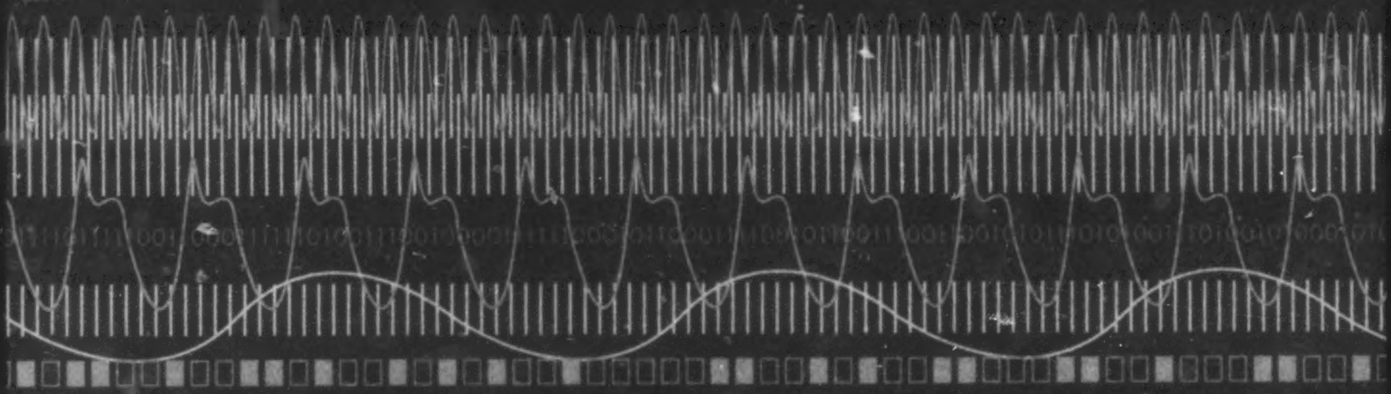
Astral Media
2100, rue Ste-Catherine O.
2e Étage

Pixcom Group Inc.
1720, rue du Canal

TVA
1600, boul. de Maisonneuve Est

ADDENDA

Request for Government Response
Canadian Alliance Dissenting Opinion
Bloc Québécois Complementary Opinion
Minutes of Proceedings



ADDENDA

Request for Government Response

Pursuant to Standing Order 109, the Committee requests that the Government table a comprehensive response to this report.

A copy of the relevant Minutes of Proceedings (*1st Session, Meeting Nos 11, 12, 17, 25-29, 31-44, 46-75; 2nd Session, Meeting Nos 3-12, 22-34, 36-38, including this report*) is tabled.

Respectfully submitted,

Clifford Lincoln, M.P.
Chair

ADDENDA

Canadian Alliance Dissenting Opinion

Outside the Box

Review of the Canadian *Broadcasting Act*

Jim Abbott, MP
Canadian Alliance Critic for Canadian Heritage
June 2003

1.0 Introduction:

This is a time of great change.

New technological developments have created an environment giving Canadians access to more radio and television choices than ever before. More options mean audiences for any one channel are smaller than ten years ago.

Broadcasting companies have responded to the challenge of audience fragmentation with a number of strategies. Some are attempting to become media conglomerates. Others are attempting to assemble a broad base of customers through cross media ownership. No one knows how successful either of these initiatives will be. Canadian Alliance — **CA** — is convinced that the next ten years will offer incredible opportunities.

CA was pleased to actively participate in the hearings of the Standing Committee on Canadian Heritage. We highly valued meeting witnesses and visiting various sites across the country. We are fully aware of the long involved history of broadcasting in Canada, which has created very complex rules and regulations governing this industry.

The current regulatory regime creates walls constraining and smothering Canadians' creativity and potential. Canadian Alliance was looking forward to this review because we believe we must think 'outside the box.'

In specific terms the "box" that constrained the Committee's work consists of three assumptions that may have been true in the past but have been undermined by changes in the broadcasting system. Two key assumptions are that Canada needs a highly detailed regulatory structure governing definitions of Canadian content and that the CBC is now as essential as it once was. A third assumption pretends that regulations can somehow keep Canadians inside a Canadian system and deliver audiences to Canadian programs. These may have been true in the past but they are now constraints on thinking about the future.

The Committee decided to include academic advisors who did not fully participate in either the site visits or the numerous hearings held by the Committee. They remained unaware of the actual evidence generated by the study process. These advisors hold well-known views about the CBC and its place in Canada's broadcasting system. As a result, many parts of *Our Cultural Sovereignty* are simply a more complex extension of aspects of the status quo.

What do Canadians want? Due to time and budget concerns the committee did not survey public opinion. The input of persons representing the industry and groups expressing focused views was somewhat helpful, however, the committee worked in an information vacuum about the audience.

After carefully reviewing the witness' testimony and the evidence available from consumers, CA concludes Canadians want unrestricted access to a variety of television programs from around the world. At the same time, they want high quality Canadian programming (be it local news, sports, music or drama) in French and English.

Canadians should be able to exercise program preference and have access to a full range of alternatives.

In this minority report we outline a number of innovative proposals that will help Canada face the coming challenges.

Our Cultural Sovereignty hearings uncovered ample information for us to be able to think outside the box and the proposals presented here are based on that evidence.

2.0 Canadian Content

The current system designed to promote Canadian content is, in fact, cumbersome and inefficient. The witness testimony about problems with the existing structure for defining and supporting Canadian content are well described in Chapter 5 of *Our Cultural Sovereignty*.

> **08.06.99**
> **Statement of Jack Valenti, Chairman and Chief Executive Officer,**
> **Motion Picture Association:**
>
> ***The U.S. copyright-based industries, were America's number one export sector in 1996. These industries together achieved foreign sales and exports of $60.18 billion, surpassing every other export sector, including automotive, agriculture and aircraft. The U.S. filmed entertainment industry alone earned about $12 billion in foreign revenues in 1997.....***

Obviously, the creation of original Canadian programming is important but the impossible question consistently eluding answer is "who judges what is Canadian?" This has lead to unaccountable bureaucracies enforcing vague definitions of Canadian content. This results in an unproductive dampening of creative innovation.

Filmmaker Ivan Reitman, after hearing that Canadian film and TV production is stagnant this year, put the blame at the feet of producers who are too concerned with getting government grants and obsessed with the definition of what is Canadian.

Ottawa Citizen 07.02.03: *"Perhaps it's a failure of vision, he said. Can it be a failure bred by an over-reliance on tax deals, government-subsidized and institutionalized filmmaking? Is it a failure that grows from a misplaced and misapplied fear of having our culture swallowed and stolen?"*

Canadian producers focus on content points that define which projects are Canadian enough to qualify for federal money. Consequently, "'creating films for the real world is ignored, and the audience is forgotten, he said. This is the only country I've been, with the exception of France, where there's so much talk about nationality in their art," Mr. Reitman said, noting that audiences are more interested in whether a movie is good rather than whether it is Canadian. Mr. Reitman told the association that there is no reason to believe that Canadian culture will be swallowed up: It is too culturally diverse… (note, he received standing ovation for these comments at the CFTP reception).

Laszlo Barna, whose firm produces the popular crime drama DaVinci's Inquest, cites the visibly Canadian content criteria, according to which recognizably Canadian settings ensure a production's eligibility for Canadian funding, as an example of how the rules have become too superficial. *"The fear is that we're going to turn this into a visual quota system. We don't want to go down the road where the Canadian component becomes only icons rather than substance."* (*National Post* 20.04.02)

Current Canadian content definition determines access to various public support programs (such as Telefilm Canada Feature Film Fund, the Canadian Television Fund or tax credits) and measures television broadcasters' conformity with CRTC regulations.

Ottawa Citizen 15.04.03

Canadian broadcasters and producers were howling yesterday after learning that an over-burdened TV funding agency had rejected two-thirds of their program proposals for next season. The decision will result in about 300 fewer hours of original Canadian programming.

"It's devastating, absolutely devastating," CTV's head of Canadian production Bill Mustos said yesterday.

"It's very disappointing, added CBC's head of programming Slawko Klymkiw. It demonstrates the system doesn't work overall particularly well to building a healthy Canadian industry."

"The government didn't understand how this relatively small tweaking of the system at such short notice would have such a consequence where 64 per cent of applications have fallen *through, representing disproportionately ... a lot of established long-running shows," panel member and producer Paul Donovan said yesterday.*

The 2003 Federal budget cut $25 million from the Canadian Television Fund. This represents less than a 4% of the total federal program spending and tax credits available for creators. However, The Committee decided to include academic advisors who did not fully participate in either the site visits or the numerous hearings held by the Committee. They remained unaware of the actual evidence generated by the study process. These advisors hold well-known views about the CBC and its place in Canada's broadcasting system. As a result, many parts of *Our Cultural Sovereignty* are simply a more complex extension of aspects of the status quo.

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Canadian Alliance supports Canadians producing content for film and television. We would create a simpler system. We would remove content definition regulations. Subsidies and tax credits beneficial to the Canadian Entertainment industry would be based on substantial involvement by Canadians.

Canadian Alliance has faith in Canada's creative community. Our primary objective is to exhibit Canadians' productions to a larger audience. We believe Canadian content is an issue of cultural development. We intend to enable Canadian creators reach an expanded international audience in broadcasting.

3.0 The National Public Broadcaster (CBC/Radio Canada)

Canadian Alliance notes the historic role the CBC played in the lives of Canadians and the continuing investment made by the Canadian taxpayer.

Canadian Alliance would maintain a long-term funding commitment to CBC Radio.

3. 1 CBC Television

CA draws attention to Figure 4.13 in *Our Cultural Sovereignty*. CBC English audience share moving from 34.9% (1969) to 7.6% (2001-2002) is a story in itself. Further analysis reveals unprecedented audience fragmentation. There is every reason to believe fragmentation will increase dramatically in the foreseeable future.

> **Mark Starowicz, CBC, "The Great Media Shift", 10.02.02** ***"We now have over 70 channels in Toronto, most of them operating at one or two per cent of the audience, and the major networks are suffering a steady decline in viewing. CTV has 13 per cent of the national market. Global, which is an even heavier importer of US programming, has 8 per cent, CBC has 9 per cent. These are small shares. By comparison, A&E, an American specialty service with no news department and no real infrastructure in Canada has 4 per cent of the Canadian audience, almost half the national broadcaster. Most of the rest of Canadian specialty services hover between one and three per cent shares.***

The position of *Our Cultural Sovereignty* which continues to see the CBC as the corner stone of broadcasting in Canada cannot be sustained in light of this fragmentation.

A recent Compas poll of Canadians shows that Canadians have as much faith in the CTV or TVA networks and specialty channels as they do in the CBC. Canadian Alliance interprets these results to say that the CBC image as protector of culture and identity on television is no longer unique. The CBC shares this image with other broadcasters including the specialty channels.

The English TV audience share is an indicator of some current harsh realities:

Over 24 hours	1997-98	2001-2
Pay & Specialty channels	31.2%	46.1%
CBC	9.8%	7.6%

Prime time 7PM-11PM		
Pay& Specialty channels	26.2%	39.6%
CBC	10.8%	9.4%

National Post 01.02.02

A former senior executive of the Canadian Broadcasting Corporation says the public broadcaster should shut down its English-language television network as soon as possible.

Robert O'Reilly, the former head of CBC's shortwave service, told a broadcasters' conference in London that dismal television ratings in English Canada have become a drag on the entire corporation.

"CBC English television is no longer a mass media broadcaster, but a specialty service offering generalized programming fare of significantly lesser depth, breadth and imagination than it did a decade ago," said Mr. O'Reilly.

He said CBC TV no longer fulfills its mandate as a public broadcaster and "should be closed as soon as possible and practical, before it becomes so irrelevant that it threatens the survival of the entire corporation."

In recognition of significant advances in technology, the choices available for viewers, and to get the government out of the business of being in business, we would restructure CBC television.[1]

Canadian Marketplace Interference – An Example

CBC sports advertising revenues exceed expenditures thereby putting the taxpayer funded network in competition with private broadcasters.

In 1999 sports broadcasts:

English TV 13% schedule; 24% audience; 40% advertising revenue

French TV 8% schedule, 6% audience; 16% advertising revenue

Hockey Night In Canada (HNIC) is the primary source of CBC advertising revenue annually, with Olympics coverage also generating positive cash flow. Last season HNIC averaged 1.16 million viewers during regular season and 1.733 million for the Stanley Cup Final.

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> In the real world of business Molson Inc. decided against returning to HNIC as the show's exclusive beer advertiser. *"It's too much money for too few viewers,"* said Dan O'Neill, Molson's president and CEO. HNIC television revenues are well below the levels of other professional sports. CBC's five-year deal, which began this season, is worth a reported $300 million.

> It's interesting to note that CBC viewing during the first round on playoffs in 2003 was down 11%. But none of these facts prohibit raw political interference in CBC scheduling of sports.

> Heritage Minister wants answers on Habs rights: CBC gives up TV coverage – The Heritage Minister, who is responsible for the state-owned Canadian Broadcasting Corporation, is "absolutely furious" with Robert Rabinovitch, the CBC president, for allowing the French-language service to lose rights to broadcast Montreal Canadiens Saturday night hockey games across Canada. SRC is forced to broadcast HNIC by severe political pressure. The way the Heritage Minister, some CBC board members and many Liberal MPs see it, Radio Canada's Saturday night Habs games are a powerful, federally promoted national unity-building asset in Quebec. (National Post 2002.06.03.)

The CBC's involvement in professional sports and the Olympics is a case in point. If the CBC is competing in the commercial marketplace why should CBC management be subjected to the kind of political interference it has experienced in recent times? The only way this can happen is because of taxpayer subsidy which simply means the CBC (often though no fault of its executives) can put taxpayers' dollars in competition with private broadcasters.

The Canadian Alliance believes *Our Cultural Sovereignty* has revealed many current and future opportunities for Canadian creators to reach citizens of our country. Local, regional and national programming is either presently available or could be made available through much more cost-effective means.

CBC Newsworld, RDI and Galaxie specialty services are currently self-funding through mandatory cable fees and advertising. Local news and information programming can be generated by local private broadcasters, cable companies, and through creation of an "independent production fund" from DTH subscriptions.

Cable network programming in New Brunswick covers local stories, is staffed by about 400 volunteers and permits broadcasting to local residents. It is a unique way for cable companies to capture customers.

Bravo, Showcase and Vision TV, three networks with similar content to the CBC, are available in ninety percent of Canadian's homes by cable or satellite (DTH).

Given these realities Canadian Alliance is convinced that the time has come to reconsider the importance of CBC television. The Committee's report may claim that the CBC is essential but the facts do not support the claim. Anyone looking at Figure 4.17 can see that the majority of Canadian programming is available on private networks. It is true that CBC attracts a large number of viewers

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We would significantly reduce CBC operating subsidy by commercialization of CBC television.

Canadian Alliance would consider transferring a portion of the current funding for CBC television to new or existing subsidy or tax credit programs to support Canadians creating content for film and television.

4.0 Access to Services

Presently existing laws and related regulations prevent Canadians from receiving satellite signals that are not authorized by the Canadian Radio-television and Telecommunications Commission (CRTC). Ambiguity about the legality of these regulations created a grey market in satellite signals. Details are discussed in Chapter 16 of *Our Cultural Sovereignty*.

Ignoring the reality of the grey market and the ability of consumers to make viewing choices leaves DTH unregulated. Canadian Alliance believes the current situation is a lost opportunity and will only get worse as Canadian and American viewers make their viewing selections in spite of, rather than within, the regulatory framework. This encourages a black market in satellite services.

This situation also ignores a common thread that runs through the entire history of broadcasting in Canada. A majority of Canadians have a taste for programming produced by the United States.

Canadian Alliance believes a sound DTH satellite policy represents an opportunity to support Canadians ability to develop an international market for their programs.

Canadian Alliance would recommend that the regulations be changed and that Canada enter into reciprocity agreements with other countries to allow citizens of each country to legally subscribe to any satellite service thus creating an open market in the licensing of television satellite distribution.

This prudent and proactive response will make Canadian programming available in the United States, which will significantly multiply the potential audience for Canadian productions.

Foreign programming will be available in Canada giving Canadians an ability to exercise program preference.

5.0 A Practical Response to Technological Change

Our Cultural Sovereignty correctly identifies the importance of creating a single Department of Communications responsible for broadcasting and telecommunications. The report also identifies the need to significantly refocus the mandate of the CRTC.

"*Our Cultural Sovereignty*" hearings have explicitly shown **the government should immediately undertake an amalgamation of all departments and enact appropriate legislation to combine all functions relating to broadcasting and telecommunications.**

Many years ago the Government had a Department of Communications that was dismantled and distributed into the Departments of Canadian Heritage and Industry. Rebuilding a Department of Communications would be a positive reaction to both technical and ownership convergence.

The Department of Communications would regulate all matters related to communications issues in Canada. Its regulation body would have less autonomy and would be more accountable than the CTRC today.

Since 1968, the Commission has functioned as an independent public authority. Too often, the CRTC acts as a law unto itself. Commissioners are appointed without any oversight or public hearings as to their qualifications. CRTC decisions are virtually without appeal.

Tinkering with the CRTC is not the answer.

It is vital that the regulator be made more accountable to Canadians. This could be accomplished through the following measures:

- Require Parliamentary hearings and a ratification vote on the appointment of the regulator's Commissioners;
- Consider an independent appeal tribunal that could review the regulator's decisions;
- Task a sub-committee of the appropriate House Committee to regularly review the laws, rules, policies and practices of the regulator to ensure fair competition and correspond with the interests of Canadians.

6.0 Ownership

6.1 Cross Media Ownership

The committee denounced any attempt to stifle editorial independence and journalistic freedom by recommending that the CRTC put a mechanism in place for ensuring the editorial independence of broadcasting operations. (11.1 and 11.2)

How would this recommendation potentially work? Take for example, the five journalists at the Montreal Gazette who were fired. Would the CRTC force the Gazette to rehire these journalists?

Patrick Watson, former CBC President, has recently floated the idea of the government establishing a newspaper so Canadians can get the "straight" facts. Canadian Alliance believes government interference is a cure much worse than the illness.

The Canadian Alliance disagrees with the recommendations in *Our Cultural Sovereignty* that would impede the ability of Canadian companies to carry on their business (i.e., Recommendations 11.1, and 11.2).

6.2 Vertical Integration

Chapter 11 of the report speaks to the issue of vertical integration. *"In August 2001, the CRTC renewed the licenses of CTV and Global but stipulated that no more than 25% of their Canadian content in prime time could come from production companies they own. This decision placed a limit on the self-dealing practices that are possible in a vertical integrated company."*

Experience in the United States marketplace has shown the audience will not accept programming exclusively from one studio. They demand variety. Canadian Alliance therefore questions the necessity of this CRTC stipulation. **The Canadian Alliance disagrees with these types of stipulations.**

6.3 Licencing Issues

Recommendation 11.4 *Our Cultural Sovereignty* puts broadcast license renewals in suspension for up to three years. This will have an adverse effect on existing cross-media owned broadcasters, putting their business into suspension. Yet another instance where the committee has prescribed a cure that is far worse than the perceived illness.

The Canadian Alliance disagrees with both parts of Recommendation 11.4 and most especially part b.

6.4 Foreign Ownership

Ms. Joie Warnock of the Communications, Energy and Paperworkers Union of Canada said '*On foreign ownership, the very fact the foreign ownership issue is being considered in the context of the Canadian broadcast system is evidence of the extent to which our public agenda is being controlled by the forces of globalization... We must protect our sovereignty in one of the few remaining bastions of Canadian identity.* (Paragraph 11.93 OCS).

Lise Lareau, president of the Canadian Media Guild/CWA Local 30213 wrote to AEEF members, explaining how CWA's lobbying efforts in the United States inspired the CMG to form a public policy advocacy coalition with other groups called Our Public Airwaves. She said the guild would not have been able to invest in the coalition if CWA's Member Relief Fund were not there to back up CMG bargaining. 'I consider our affiliation with the CWA our backbone' (CWA news release).

The spokesperson for the union must have known that the Canadian Media Guild is part of the Communication Workers of America (CWA), one of the CBC unions. They formed "Our Public Airwaves" engaging in public advocacy on broadcasting in Canada.

The view that a union may be financed in the US but a corporation may not seems disingenuous.

By contrast, the question of a possible linkage between foreign ownership and the exhibition of local content was studied carefully by the Australian Senate Environment, Communications, Information Technology and the Arts legislation Committee in its review of the Bill, June 2002. (Paragraph 3.24): *"The Committee believes that in relation to foreign owner influence, it is reasonable to assume that foreign owners will be motivated to maximize profits, rather than influence public opinion. Accordingly, it is to be expected that they would provide content with the aim of maximizing consumer demand and therefore advertising revenues. There is therefore a commercial imperative for broadcasters to include Australian content... The committee therefore considers that concerns about a diminution of locally produced programming should this Bill proceed are unfounded."*

Canadian Alliance disagrees with Recommendation 11.5.

Canadian Alliance supports relaxing foreign ownership rules on Canadian industry, including telecommunications and broadcast distribution. We suggest conducting an immediate review to determine whether to reduce or completely remove these rules.

Canadian Alliance has a coherent policy on issues of foreign ownership for the following reasons:

- Our policy on foreign ownership frees up capital.
- Foreign ownership restrictions are a leftover of a system of barriers to trade and the free flow of goods, service and labour.
- Direct to home (DTH) competes with cable providers for the same customer. Shaw Cable owns Star Choice, while Bell Canada owns Bell ExpressVu. Both Shaw and Bell contract satellite space

to deliver their DTH signals. Therefore the distinction between broadcast distribution (previously terrestrial cable) and telecommunication has been eliminated by technological convergence.

- Allowing Bell and other telecommunication companies access to foreign capital while freezing access to other broadcast distributors would be illogical.

Canadian Alliance recommends that the review include the impact of changes on broadcasters and content creators. We are aware this would be breaking new ground.

> **CRTC letter 04.02.03** ***The Canadian broadcasting system must be effectively owned and controlled by Canadians. This safeguards, enriches and strengthens the cultural, political, social and economic fabric of Canada.***
>
> **Chapter 11 speaks of Canadian presence on the air coming under attack and wonders, "*could Canada's creators be guaranteed the same access to the Canadian market they now enjoy? Furthermore, how would existing subsidy programs work if Canadian-controlled firms were no longer operating national networks in Canada?*"**

In committee Canadian Alliance asked, "Why wouldn't they have access? Why wouldn't Canadians be able to establish whatever regulations we deem necessary?" We never received an answer or even an attempt at an answer.

7.0 The Private Sector

Canadian Alliance believes that the private sector is the dominant force in Canadian broadcasting. Recognizing this, it is important to state that they have an opportunity and a responsibility to assist and promote our artists and creators.

7.1 Music, Artist, Production, Lyrics (MAPL)

Canadian Alliance is convinced there should be a review of the MAPL rules. This study should include a review of definitions of Canadian content and the ways in which the system can foster the development of new artists. (i.e., Recommendation 8.1 of *Our Cultural Sovereignty*).

Canadian Alliance suggests the review look at the following ideas:

- reduce the 35% rule to two times the Canadian music sold in Canada,

- alter the '2 of 4' rule as follows – 4 criteria = 100%, which would allow credit for established Canadian artists access to their Canadian fans.

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- alter the '2 of 4' rule as follows – 4 criteria = 100%, which would allow credit for established Canadian artists access to their Canadian fans.

- new Canadian artists plays would be eligible for a small multiple (example M=1, A=2, P=1, L=1 equaling 125% credit).

8.0 Copyright

The 1997 copyright bill C32 had apparent flaws built in, none more obvious than the right of transfer of medium for broadcasters. To do business, performing daily technical tasks, broadcasters electronically transfer stored audio content between storage/format mediums either 'in-house' or distances by broadband.

Clauses 30.8 and 30.9 (of Bill C-32) were drafted to allow for exemption of broadcasters from copyright fees. Sub-clauses (8) and (6) were added at Committee thus negating the exemptions.

Canadian Alliance strongly opposed these revisions and we were sceptical of the testimony of the CMPA before committee. "Music publishers recognise that such copying [radio transfers of format] is integral to the operation of radio stations, and also realise that any publisher foolish enough to demand payment for such copying would likely find himself frozen out of the station's playlist in short order"

Subsequent initiatives by copyright holders validated our skepticism. The broadcast industry has been assessed fees of more than $20 million retroactively from January 1, 2000. The notice of liability for payment dated March 28, 2003 indicates payment due May 31, 2003. Cost estimates to the end of 2004 are $6.5 to $7 million per year.

"The Committee recognises the pressing need for copyright reform in the digital age and intends to address all relevant broadcasting issues during its forthcoming statutory review of the Copyright Act."(*Our Cultural Sovereignty* Chapter 13)

This is an underwhelming response to a serious situation. The Committee doesn't recognize broadcasters present cash flow problems, which have resulted in layoffs of staff in many stations.

The Heritage Minister has historically resisted amending the Act saying that it must be considered in its entirety. However, in spite of those statements she has now introduced Bill C-36. Clause 25 of Bill C-36, amends Section 30 of the Copyright Act.

Having opened Section 30 of the Copyright Act subsection 5 why wouldn't she introduce amendments to sub clauses 8 and 9 of the Copyright Act at Committee following second reading of the bill?

Canadian Alliance is opposed to the practice of imposing retroactive fees. In the case of C-32 there was an egregious abuse of the legislative process and the exceptions that allowed ephemeral rights should never have been approved. The subsequent imposition of fees should be negated.

Canadian Alliance does NOT accept retroactive legislation as a constructive legislative tool. However, in this instance, in view of the manner in which these exceptions came about and the negative impact they have created, we propose the following: Canadian Alliance calls for the government to immediately bring forth amendments to the Copyright Act to delete clause (8) of 30.8 and clause (6) of 30.9. Further, that the government consider ways to effect those deletions retroactively.

9.0 Summary

The key proposals Canadian Alliance is suggesting are to:

- Relax definitions of Canadian content;
- Maintain support for CBC radio;
- Reduce taxpayer support to CBC television as it is commercialized;
- Consider applying some of the savings to support the production of Canadian content;
- Make Canadian programming available in the United States;
- Give Canadians the ability to exercise program preference;
- Create a single Department of Communications;
- Create a more accountable regulator;
- Complete an immediate and thorough review of foreign ownership rules related to telecommunications and broadcasting;
- Review MAPL;
- Amend the Copyright Act to deal with the issue of ephemeral rights;

Implementing these changes would increase support for Canadian creators and Canadian programs. They would also allow Canadian programs to reach larger audiences.

10.0 Conclusion

These proposals made by Canadian Alliance deal with the opportunities facing the Canadian broadcasting system. Canadian Alliance will give creators and the industry an opportunity to compete for an expanded audience. Canadians would be able to exercise program preference and have access to a full range of alternatives.

Since 1867 Canadians have turned challenges into opportunities. We have carved a niche in the international world of technology. We have done so through courage, initiative and foresight. Canadian Alliance believes that the gradual and incremental alterations recommended in *Our Cultural Sovereignty* are timid and defensive.

In this minority report we are saying we believe in Canadians.

If we drop a number of outdated assumptions that narrow our choices and restrict our opportunities Canadian Alliance believes Canadians can create, compete and prosper.

Endnote:

[1] The Canadian Alliance position in this minority report refines the 1995 Reform Party minority position in the Standing Committee on Canada Heritage report "Future of the Canadian Broadcasting Corporation in the Multi-Channel Universe". The minority position recommended splitting CBC into CBC Television and CBC Radio and divesting CBC television operations

ADDENDA

Bloc Québécois Complementary Opinion

When Cultural Sovereignty Is Threatened

Context

This report is the end result of 24 months of instructive discussions and consultations, which have enabled us to understand more clearly the various issues at stake in the broadcasting system. The Bloc Québécois would therefore like to thank all the individuals and groups from Quebec and Canada who provided evidence to the Committee. The wide range of views expressed and the diversity of solutions suggested once again expose the complexity of the Canadian broadcasting system.

Although this report sets out several recommendations that would support creation if they were implemented, some of the recommendations do not go far enough. We also believe there are other recommendations that should have been made which would contribute to meeting the legislative objectives.

When cultural sovereignty is threatened

If the federal government acknowledges that urgent action is required to safeguard Canadian culture vis-a-vis the United States, it must also recognize that Quebecers' battle to protect and develop their own culture is legitimate.

The Government of Quebec is in the best position to defend its culture. It is completely reasonable that this is the government to address the cultural development of Quebecers. All Quebec governments, regardless of their political allegiance, have defended their autonomy and maintained that culture is an area of exclusive provincial jurisdiction.

> *[translation]* **"Today, Quebec can be proud of its record on culture, with has had exceptional results reflecting the major efforts made by the Quebec government to support culture in all its forms. But no matter how productive these efforts have been, they are no match for the restrictive nature of Canadian federalism. The federal government is of the view that there is not really a Quebec identity or culture: there is only one Canadian culture, a multicultural culture, expressed in several languages, one of which is French."**
>
> Parti québécois[1]

> *[translation]* **"A responsible government must take the necessary steps, in terms of both relations with the federal government and international relations, that will allow us to determine and govern our collective future."**
>
> **Liberal Party of Quebec**[2]

Recent history has shown that the spending power of the Canadian government and its courts led to increased federal intervention in one of Quebec's vital areas: culture.

Given the current constitutional framework, it might be expected at the very least that the federal government would heed the priorities set by the government elected legitimately by Quebecers.

The Bloc Québécois has identified six areas of insecurity that are not adequately covered by this report:

1. Non-recognition of Quebec's cultural specificity

2. Recommendations on cultural content

3. Job protection

4. International negotiations and culture

5. Institutional politicization

6. Media concentration

Our main recommendation derives from these challenges:

The Bloc Québécois asks that the federal government respond positively to the request from the Quebec Government, which is unanimous in demanding a new federal-provincial administrative agreement [...] in the field of the communications.[3]

Our complementary opinion attempts to respond to these concerns.

1. Non-recognition of Quebec's cultural specificity

Quebec culture is a reality that is recognized in Quebec and abroad for its vitality and originality. Audiences in Quebec recognize and identify with Quebec content. In all areas of cultural expression, Quebecers are fond of made-in-Quebec cultural productions, in particular in broadcasting, while they welcome foreign cultural productions.

To no one's great surprise, the Committee succeeded in reviewing the *Broadcasting Act* without any acknowledgement of Quebec's distinctive culture. After hearing from hundreds of witnesses, after meeting for hundreds of hours, and after visiting several large Canadian cities, including Montreal, the Committee still refuses to deal frankly with a fundamental reality: Quebec has its own culture and its own institutions. Quebec culture is not merely a regional element, as the committee seems to think. Ignoring Quebec culture is a denial of its existence and a refusal to promote it.

How can we discover Quebec's identity, when the compilation of various statistical tables includes figures for all francophones in Canada, and it is impossible to obtain an accurate profile of French-speaking Quebecers, or English-speaking Quebecers, for that matter.

One of the problems with the *Broadcasting Act* is that it does not have a definition of the adjective "regional"; a "region" may be assimilated with a group of provinces, one province or another region (part of a province). Quebec will never agree to being regarded as a region. This results in a confused understanding and application of the law.

The report mentions Quebec's "star system," which is the envy of Canadians. Stars have developed in Quebec because Quebec audiences are proud of the talented Quebecers who have, through their activities, gained popularity and recognition. At the same time, they have great respect for their stars.

Regarding broadcasting and culture, the Bloc Québécois can testify to the many initiatives by the federal government designed to limit Quebec's place in Canada:

- What is the explanation for the non-recognition of Quebec's culture in the legislation incorporating the department responsible for broadcasting and cultural development?

- Can we really believe that the major federal institutions in broadcasting (CRTC, CBC, etc), given the obsession and constant pressure to come up with a Canadian vision, will be able to preserve Quebec's cultural space? Consequently, their own legislation and their mandates aim at reducing Quebec culture to the level of a regional characteristic (the CBC's mandate states that the corporation must "contribute to shared national consciousness and identity").

- How can we believe that Quebec culture is esteemed, when funding for Canadian content is increasingly conditional on performance criteria that are, more often than not, associated with effectively promoting new Canadian symbols?

Thus, while the members of the Committee made "the public interest" the main theme in this report, we are entitled to ask whether the recommendations really help safeguard the interests of Quebecers who are eager to see Quebec content, i.e. content developed by Quebec artists that echoes Quebec's reality.

The Bloc Québécois recommends that the federal government recognize that Quebec has sole responsibility for arts and culture in Quebec, and to sign a framework agreement with the Government of Quebec acknowledging this responsibility and transferring the necessary funds to Quebec.

The Bloc Québécois recommends that the federal government negotiate an agreement with the Government of Quebec to make the province solely responsible for communications and telecommunications undertakings.

The Bloc Québécois recommends that the federal government amend the mandate of the Canadian Radio-television and Telecommunications Commission (CRTC), requiring it to consider the impact of its decisions on minority communities and that the CRTC be compelled to revise its definition of community, to ensure that allophones are not automatically grouped together with anglophones.

2. Recommendations on cultural content

Although the Committee is making several recommendations on cultural content, funding for this sector is still haphazard.

Intervention by the Government of Quebec, combined with the drive of the private sector, created a leveraging effect that led to the blossoming of Quebec's culture. However, it is clear that cultural organizations in Quebec need additional financial resources if they are to remain viable. The management and the results of these sectors are patently affected by the federal government's failure to live up to its commitments in terms of financial support to television production and to provide stable financial assistance.

• *Canadian Television Fund (CTF)*

Although in its report the Committee recommends stable, long-term funding[4] from the Canadian Television Fund, the federal government is sending contradictory signals to the cultural sector in Quebec and Canada: in the latest federal budget, the Finance Minister cut the Canadian government's contribution to the Canadian Television Fund from $100 million to $75 million per year for the two next years, while at the same time he announced an increase of $25 million per year in tax credits for foreign films produced in Canada. We are not opposed to the latter measure because it provides jobs for some of those working in this sector. But who is on the losing end of the $25 million budget cut? The small producers in urban centres and in the regions, but the regional producers will be paying almost the entire cost of the budget cut. In the television community, that was perceived by our own producers and creators as a slap in the face.

The federal government must maintain its level of funding for the Canadian Television Fund at no less than $100 million: it is a base amount that enables the industry to survive, but it should go further so that Quebec and Canadian producers can provide substantial content.

In addition, in the interests of equity, regional television producers would like to see the implementation of measures similar to the ones earmarked for francophone producers in minority communities (IPOLC - Interdepartmental Partnership with Official Language Communities); the objectives might read as follows:

- Facilitate access by the regions to federal programs for television production;
- Contribute to sustainable development in the regions;
- Serve as leverage to promote the establishment of long-term partnerships and new methods of co-operation.

We support this request from regional producers to safeguard regional television production and to maintain jobs in the regions.

The Bloc Québécois recommends that the federal government guarantee minimum annual funding of $100 million to the Canadian Television Fund (CTF). All amounts invested by the private sector in excess of $100 million should be matched dollar for dollar by the federal government.

The Bloc Québécois recommends that the Canadian Television Fund set aside a specific budget for regional productions.

• *Community media*

The *Broadcasting Act* states clearly that:

> 3(1)(i): the programming provided by the Canadian broadcasting system should: […] (ii) be drawn from local […] sources, (iii) include educational and community programs[1].

However, a new CRTC policy has changed the concept of "community". When it adopted its policy on community-based media in 2002, the Canadian Radio-television and Telecommunications Commission created a new class of licence, called the *Community-based television programming undertaking*, with two sub-categories (*community-based low-power television undertaking* and *community-based digital services*). However, we cannot agree with the CRTC when it makes these categories accessible to for-profit applicants as well. Though the Committee did not condemn this situation, the Bloc Québécois considers it important to preserve the specific, for-profit nature of the community-based media in Quebec.

In fact, Quebec has a long history of non-profit community radio and television stations. People throughout Quebec joined together in community-based groups in order to broadcast different programming. The government budget cuts in the early 1990s did a great disservice to the community-based media. The Government of Quebec began investing again in community-based radio stations in the amount of $10,000 to $44,000, depending on the population base served, and its investment in community-based television station ranged from $5,000 to $25,000[6].

The Bloc Québécois recommends that the Canadian Radio-television and Telecommunications Commission reconsider its position and that the licences awarded to the community-based media remain not for profit.

Moreover, we feel recommendation 9.8 (p.56) on the creation of a Local Broadcasting Initiative Program (LBIP) is unfair, as the program is oriented toward disadvantaged communities in the regions, and that they should have a financial role to play in this program. As not all communities having the same financial resources, it seems unfair to ask communities that are already undercut by poverty to invest. The government will have look into of the ability to pay of the communities for which the LBIP is intended.

The Bloc Québécois recommends that the funds earmarked for the implementation of the Local Broadcasting Initiative Program (LBIP) be transferred to the Government of Quebec, to be used in meeting the specific needs of specific regions.

3. Job protection

The vitality of Quebec's culture is also reflected in the organizations formed by cultural sector employees. Quebec's cultural community comprises professional trade unions and groups that work independently, or in co-operation when necessary with their Canadian and international counterparts on specific broadcasts.

It is essential that the federal government's regulatory framework, tax system and programs protect these workers to the full extent of its powers.

The Committee's mandate was very broad. We believe that section 3.(1)(*d*)(iii) makes it legitimate for us to propose amendments to other Canadian statutes:

> through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children [...] [7].

3.1 Canada Labour Code and strike breakers

Various labour conflicts in the telecommunications industry (with Radio-Nord, Vidéotron, etc.) should remind members of Parliament of the need for better protection for the workers subject to the *Canada Labour Code*.

The Bloc Québécois asks that the *Canada Labour Code* be amended to ban the use of strike breakers.

3.2 Training

Cultural sector workers and creators live in a state of permanent insecurity, most of the time as self-employed or contract workers; the absence of a social safety net, inadequate remuneration (despite their years of education) and the failure to enforce *Income Tax Act* provisions, which would enable them to spread their income over more than one year, are among the problems highlighted in a report entitled Face of the Future.[8]

One of the problems raised in this study is that volunteers are often given jobs that should properly go to paid workers. Moreover, the cultural sector is an excellent training ground, with the result that it is difficult to keep workers with experience and there is a turnover rate that is markedly higher than in other industrial sectors.

Another aspect of employment in the cultural sector is that it is extremely difficult for cultural workers to receive adequate training at a reasonable cost, particularly in the regions. Some of the report's recommendations deal with mentoring to train replacements, while others cover developing career management skills and adapting to the new context of globalization and an increasingly open and competitive market.

The Bloc Québécois contends that labour is an area of provincial jurisdiction and that the federal government should transfer to the provinces all the money that it spends on labour, which would enable the provinces to set their priorities according to their own needs. Moreover, the Harel-Pettigrew labour market agreement, signed by Quebec and the federal government in 1997, transferred management of most programs to Quebec.

> The cultural sector is a well-worn training ground that produces talented workers who, upon reaching a threshold skill level or a ceiling on their professional advancement, leave the sector for opportunities elsewhere.[9]

Some of the "young" clientele retained by the federal government head early in their careers toward the cultural sector to get experience.

The Bloc Québécois recommends that the federal government transfer all labour clienteles and increase its contribution to 0.8 per cent of the insurable payroll, that is, to the ceiling defined by the *Employment Insurance Act*.

3.3 Employment insurance

Canada's employment insurance system is not designed to accommodate atypical work patterns. Workers in television, films and the cultural sector generally have an insecure status and fluctuating incomes.

To protect these workers, who are essential to the cultural industry's development, the Bloc Québécois recommends that the government consider creating a framework that would extend the application of the employment insurance system, for both regular and special benefits, to the self-employed.

The Bloc Québécois recommends that the government consider expanding the application of the employment insurance system to workers who combine self-employment and salaried employment. If the government decides not to do so, premiums should be reimbursed to those persons who have insurable employment but cannot apply for benefits because of their status as self-employed.

3.4 Taxation System

One way of enabling cultural workers to enjoy a better quality of life would be to reform the taxation system to allow for income averaging: cultural workers sometimes earn substantial incomes in one year and much lower incomes in previous or subsequent years. To facilitate the management of their taxes, it would be useful to harmonize the federal *Income Tax Act* with that of Quebec.

The Bloc Québécois recommends that the federal government permit income averaging for workers in the cultural sector.

The Bloc Québécois recommends the federal government harmonize its *Income Tax Act* with that of Quebec so that copyright revenue under $15,000 is not taxed.

4. International negotiations and culture

The cultural sector notes and deplores the weakness — or worse still, the absence — of provisions on culture in international trade agreements. The Committee's Report deals in Chapter 17 with globalization and cultural diversity. A number of the witnesses heard from confirmed the need to pay special attention to the effects of globalization on the cultural domain.

One group of cultural organizations from Quebec said in its brief,

> "[TRANSLATION] If we leave the market to do as it chooses, without setting guidelines, it will be virtually impossible to produce and distribute effectively content that reflects diverse cultures. Globalization must take a form that safeguards the conditions that make it possible to maintain and develop cultural diversity. And this presupposes the maintenance in each country of conditions that allow for the production of original works."[10]

Globalization cannot be seen as simply a matter of liberalizing trade without regard for the conditions in which cultural works are produced and distributed (music, television programs, etc.).

Well-known biologist and ecologist Francesco di Castri said while passing through Quebec City on March 23, 2003, that there are two societies in the world that have been able to benefit from the new openness [i.e., globalization] to assert their cultural distinctiveness in the eyes of the world: Quebec and Catalonia are, according to him, the best examples of the approach that has to be taken in the current situation.[11] Quebec simply wants more freedom for its cultural outreach.

Globalization must not be seen solely in its narrow trade aspect, because from that perspective the only things that matter are efficiency and competition. All the aspects of life in community are subsumed in merchandise. In this view, the market is the one and only yardstick. But it is not true that the planet is just a huge global market in which a variety of objects are exchanged.

The exclusively economic perspective must not be allowed to predominate over all the others. It is incompatible with cultural diversity: if we leave everything up to the market, there will soon be no cultural diversity at all, because it will be impossible to produce and distribute content that reflects different cultures. Globalization must be the goal only in a context where it is possible to maintain and promote cultural diversity. Above all, we must not make the mistake of regarding broadcasting as just a telecommunications service. How would it be possible to maintain Canadian content requirements if control of broadcasting undertakings slipped from Canadian hands? Broadcasting undertakings are the main vehicle for cultural content. There is also a risk for freedom of expression, quality of information and diversity of viewpoints: cultural expression and freedom of expression cannot be dissociated.[12]

In this era of globalization, three challenges identified by Professor Ivan Bernier must be met by nations:

1. preventing globalization from thwarting their efforts to preserve and promote linguistic diversity by treating languages primarily as barriers to be overcome in the exchange of goods and services;

2. maintaining linguistic diversity, a battle which cannot be won by leaving out the international dimension of the problem. Equally, attempts to promote cultural diversity internationally can only benefit from more vigorous consideration of the linguistic dimension. The fact that more

and more efforts are being made in the world to preserve languages at risk of disappearing testifies to a growing sensitivity to this aspect of the preservation of cultural diversity;

3. convincing governments that new information technologies are ultimately subject to government policy and that governments do not have to yield to arguments to the contrary, even though unilateral action in this regard is more difficult.[13]

Given the importance of these crucial issues, it is essential that the Quebec government participate in international negotiating sessions.

The Bloc Québécois recommends that the federal government make a commitment to assure the participation of the Quebec government in all international negotiations with a bearing on Quebec's powers, in particular in areas that may affect culture.

5. Politicization of public institutions

A number of the witnesses spoke of the independence of cultural bodies from the government; Chapter 18 of the Report deals with these issues. The witnesses argued that the process of making appointments to such bodies lacks transparency and that this threatens their independence.

For example, Quebec's Fédération nationale des communications said in its brief to the Committee,

> "[TRANSLATION] Given the major issues of economic and technological evolution, there can never be too much emphasis on the importance of a broadcasting service like the CBC, which is supposed to be independent of the dominant economic and political pressures."[14]

A group of Quebec cultural organizations referred in its brief to the need for editorial independence:

> "[TRANSLATION] The *Broadcasting Act* stipulates that the CBC provides its services as the 'national public broadcaster'. This definition is important: the Corporation is not simply a mouthpiece for the government, it is responsible for providing a service that by its very nature presupposes editorial independence. By stipulating that the CBC provides a national public broadcasting service, the Act manifests its intention of giving the Corporation a degree of liberty analogous to that which is in principle allowed to other broadcasting undertakings."[15]

The Heritage portfolio is a huge one, and one of its objectives is defined as follows:

> "To encourage the building of collaborative partnerships between the Government of Canada and individuals, groups, institutions and organizations that will promote Canadian identity and enhance national unity."[16]

The politicization of the main Canadian broadcasting institutions rubs the industry and the people working in it the wrong way, because it exerts on them pressures that can go so far as to limit their freedom of speech and action. The Bloc Québécois wishes to point out that political alignments and practices are not uncommon in the industry.

Here are some examples:

In 1995, the present Minister of Canadian Heritage coolly insisted that the CBC has a mandate to promote national unity. She said that it was unreasonable for Ottawa to pay the Corporation's bills if it had no responsibility for national unity.[17]

- In December 1998, the CBC's Director of Television News, Jean Pelletier, in a reply to a letter from a listener, made a comment that speaks volumes about the politicization of this Crown corporation: "[TRANSLATION] I am writing three days after the election. The polls were wrong, Charest was elected, and Mr Bouchard has pushed back the holding of a referendum to some unknown date. Some people would say that good sense has prevailed. I think we had a hand in the outcome."[18]

- It has become commonplace in the Canadian system to appoint to the head of the CBC former politicians or party faithful who can be counted on keep a watchful eye out for the protection of Canadian unity. Let us recall just the two most recent cases: former Conservative Cabinet Minister Perrin Beatty, who was CEO of the CBC from 1995 to 1999, and the current CEO, who is known for his political activism, having sat on a national unity committee in the Privy Council Office in the late 1970s.

- The Bloc Québécois has proved in the past that a majority of the members of the Board of the CBC were generous contributors to Liberal Party coffers.

- In December 2002, the Bloc Québécois revealed that a program host with RDI had been a governor of the Council for Canadian Unity (CCU), an organization dedicated to the stubborn promotion of Canadian unity.

- Telefilm Canada was chaired by François Macerola, a militant federalist who ran for the Liberal Party of Quebec in 1998. He succeeded Laurier LaPierre, who was later appointed to the Senate by the Liberal government.

How can there be any credibility in the political independence of organizations reporting to the Department of Canadian Heritage when the Department includes in its mandate the promotion of Canadian unity?

The Bloc Québécois recommends that all reference to the need to "contribute to a shared national consciousness and identity"[19] as stipulated in section 3(*m*)(vi) of the 1991 *Broadcasting Act*, be removed from the CBC's mandate.

The Bloc Québécois is delighted that the members of the Committee recognize the problems involved in the appointment process. The recommendations proposed by the Committee in Chapter 18 of its Report constitute a positive step in the right direction. However, the recommendations strike us as not strong enough.

The Bloc Québécois calls on the federal government to change its manner of appointing presidents and members of boards by entrusting this responsibility to an independent committee, so the various institutions that make up the broadcasting system can be independent from the political arm.

6. Media concentration

For 30 years now, despite repeated warnings, successive governments have allowed media conglomerates to develop in Canada. Today the movement toward concentration is virtually complete. But it is not too late to intervene and to make changes that will ensure separation between the various media.

Regulation of communications is an area of jurisdiction shared by the Quebec and federal governments. Until such time as a Quebec City-Ottawa agreement is negotiated (as demanded by a committee of the National Assembly[30]) to clarify the responsibilities for communications of the two levels of government, in particular regarding quality and diversity of information, we propose that the federal government clarify its own laws and spell out the mandates of its own institutions.

We believe that governments must stay out of the internal affairs of the media, if only to ensure their diversity. However, the state may have to resort to measures that encourage competition.

The Canadian broadcasting system has public, private and community components. In the opinion of the Bloc Québécois, all of these components must be put to good use.

6.1 Internal oversight committee

A comprehensive system designed to monitor media concentration must include some self-regulation on the part of private enterprise.

The Bloc Québécois wants the Canadian Radio-television and Telecommunications Commission (CRTC) to force the conglomerates to set up an internal oversight committee mandated to enforce codes of ethics dealing with relations between the various enterprises that make up the conglomerates. The findings of these committees would have to be made public every year.

6.2 Foreign ownership

In our opinion, increased foreign ownership would not solve the problem of media concentration. On the contrary: weaker restrictions on foreign ownership and an influx of new capital would accelerate the concentration process.

The creative people of Quebec who testified before the Committee were unanimous in this regard:

> "Without Canadian ownership of broadcasting companies, it would be impossible to maintain the integrity of the system and its fundamental mission, which is to safeguard, enrich and strengthen the cultural, political, social, and economic fabric of Canada."[21]

We are extremely concerned that the Industry Committee has recommended the liberalization of foreign ownership in the telecommunications sector and indirectly the liberalization of ownership rules for broadcasting distribution undertakings.

The Bloc Québécois recommends that the Heritage Minister actively lobby her Industry colleague to maintain the existing foreign ownership rules for telecommunications and broadcasting.

Conclusion

The Canadian broadcasting system seems to have gone off-course: it is now more open to the world but it is also too focused on major urban centres, and local and regional communities feel forgotten. Is it necessary to point out that local and regional programming and production seem to be difficult, even impossible, to achieve?

The evidence heard by the Committee highlighted the broadcasting system's inability to provide appropriate support to all communities in Quebec and Canada, with the result that it has not proved able to assist the francophone communities outside Québec, First Nations peoples and certain regions within Quebec and Canada in their legitimate desire to be able to express themselves through the system.

This leads us to wonder about the delicate balance required to preserve our identities while adapting the system to the new technologies, in a context of globalization. The issues to be reconciled are manifold and today's challenges will continue into the future. It is even likely that they will be magnified. The broadcasting system needs a new direction and greater flexibility if it is to meet the needs of the cultural realities being expressed in Quebec and in Canada. The rapid implementation of the recommendations will not in itself be enough to bring about this change of direction.

If there is one sphere of activity in which we must be vigilant and make no compromises, with respect to globalization, it is definitely the cultural domain. For some people, "globalization" seems to be a magic wand that fixes everything, but for others, the lost democracy and influence over culture that it conceals demand attention. To understand the impact of globalization on broadcasting institutions, we must ask who profits. What is more, globalization tends to bring about conditions on which governments are not consulted, and to create a plutocracy directed by a small group.

The Bloc Québécois remains convinced that sovereignty for Quebec represents the best means of protecting our culture and assuring its development in the current context of technological expansion and globalization of trade. We have every confidence that Quebec talent, supported by the Quebec government, will be able to adapt successfully to the challenges of the 21st century. However, in this complementary opinion we are making recommendations adapted to the existing federal framework, for the sake of Quebec's culture and its artists and craftspeople.

We conclude by recalling the enthusiasm that Quebec culture arouses because of its creativity, its dynamism and the international renown of its artists.

Endnotes

[1] Parti québécois, Programme, May 2000, p. 30

[2] Quebec Liberal Party. De rempart à tremplin : Priorités d'actions politiques pour le secteur de la culture et des communications. March 2003, p. 12.

[3] Quebec National Assembly, Committee on culture. Mandat d'initiative portant sur *La concentration de la presse*. November 2001, recommendation 6.

[4] Our Cultural Sovereignty: The Second Century of Canadian Broadcasting. Report of the Standing Committee on Canadian Heritage, May 2003, recommendation 5.10

[5] *Broadcasting Act*, updated December 31, 2002, p. 3

[6] Quebec Ministry of Culture and Communications, Programme de soutien aux médias communautaires 2003-2004 dans calcul de la subvention

[7] *Broadcasting Act*, version of December 31, 2002, p. 3

[8] *Face of the Future*, A Study of Human Resource Issues in Canada's Cultural Sector: Findings and Recommendations, Mercadex international, December 2002.

[9] Idem, Executive Summary, p. 2.

[10] ARRQ, Maitriser notre espace pour contribuer à la diversité culturelle. Brief submitted to the Heritage Committee, August 15, 2001, p.16.

[11] Anne-Louise Champagne, *Le Soleil*, March 23, 2003.

[12] Bernier, Ivan, La préservation de la diversité linguistique à l'heure de la mondialisation. Study prepared for the Quebec Ministry of Culture and Communications, published in Laval University's *Cahiers de droit*, vol.42, no.4, December 2001, pp.930-960.

[13] Idem.

[14] Fédération nationale des communications CSN, L'État du système de radiodiffusion. Brief submitted to the Heritage Committee, August 15, 2001, p. 13.

[15] ARRQ, op. cit., p. 34

[16] *Strengthening andCelebrating Canada for the New Millenium*, article 5.

[17] *Le Devoir*, Wednesday, November 15, p. A4.

[18] See appendix to the 1998-99 Annual Report, Office of the French Network Ombudsman, CBC, vol. 2.

[19] Report of the Heritage Committee, version 5, ch. 6, p. 9.

[20] Quebec National Assembly, Culture Committee, Mandat d'initiative portant sur *La concentration de la presse*, November 2001.

[21] Association des producteurs de films et de télévision du Québec, Association des réalisateurs et des réalisatrices du Québec, SARTEC and APFTQ. From the evidence of the Heritage Committee, Tuesday, December 3, 2002.

ADDENDA

Minutes of Proceedings

Tuesday, May 6, 2003

(*Meeting No. 38*)

The Standing Committee on Canadian Heritage met *in camera* at 3:33 p.m. this day, in Room 705, La Promenade Building, the Chair, Clifford Lincoln, presiding.

Members of the Committee present: Jim Abbott, Paul Bonwick, Liza Frulla, Christiane Gagnon, John Harvard, Wendy Lill, Clifford Lincoln, Dennis Mills and Alex Shepherd.

In attendance: *From the Library of Parliament*: Sam Banks and Joseph Jackson, research officers. *Consultant*: David Black.

Pursuant to Standing Order 108(2), the Committee resumed its study on the State of the Canadian Broadcasting System. (*See Minutes of Proceedings dated November 7, 2002, meeting No. 2*).

The Committee resumed consideration of a draft report.

It was agreed, — That the Committee adopt the draft report, as amended, as a report of the Committee to the House.

It was agreed, — That, pursuant to Standing Order 109, the Committee request that the Government table a comprehensive response to this report.

It was agreed, — That the Chair be authorized to make such typographical and editorial changes as may be necessary without changing the substance of the report.

It was agreed, — That 2,500 copies of the report be printed in English and 1,250 in French.

It was agreed, — That 3,000 copies of the report be produced in compact disc form.

It was agreed, — That, pursuant to Standing Order 108(1)(*a*), the Committee authorize the printing of brief dissenting and/or supplementary opinions as appendices to this report, immediately after the signature of the Chair, and that the opinions be sent to the Clerk of the Committee in electronic form in both official languages on or before Monday, May 12, 2003.

It was agreed, — That the Chair, or his designate, be authorized to present the report to the House.

It was agreed, — That the Clerk of the Committee organize a press conference on tabling day, after the tabling of the report.

At 5:20 p.m., the Committee adjourned to the call of the Chair.

Christine Fisher
Clerk of the Committee

Tuesday, June 3, 2003

(Meeting No. 42)

The Standing Committee on Canadian Heritage met in a televised session at 9:08 a.m. this day, in Room 253-D, Centre Block, the Chair, Clifford Lincoln, presiding.

Members of the Committee present: Jim Abbott, Carole-Marie Allard, Paul Bonwick, Sarmite Bulte, Liza Frulla, John Harvard, Wendy Lill, Clifford Lincoln, Alex Shepherd and Chuck Strahl.

Acting Members present: Jocelyne Girard-Bujold for Christiane Gagnon and Réal Ménard for Caroline St-Hilaire.

In attendance: From the Library of Parliament: Monique Hébert and Sam Banks, research officers.

At 10:15 a.m., the sitting was suspended.

At 10:20 a.m., the sitting resumed in camera.

The Committee proceeded to a discussion of future business.

It was agreed, — That, as the filing of dissenting or supplementary opinions submitted by the Canadian Alliance and Bloc Québécois parties after the May 12, 2003 deadline set by the Committee was done in good faith after advising the Clerk, the Committee accept the said reports for inclusion in its report on the State of the Canadian Broadcasting System.

At 11:00 a.m., the sitting was suspended.

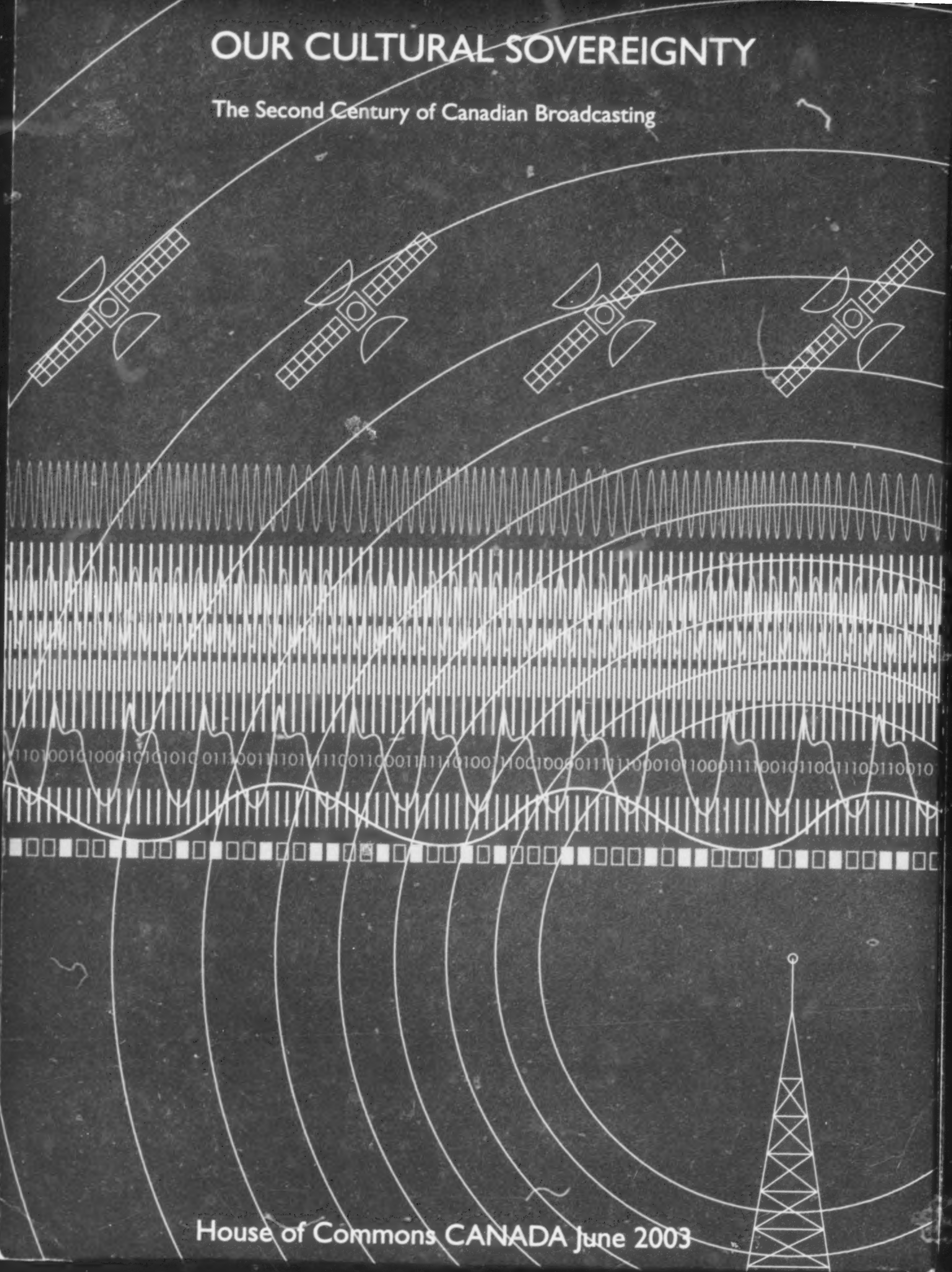
At 11:01 a.m., the sitting resumed in public.

At 12:10 p.m., the Committee adjourned to the call of the Chair.

Christine Fisher
Clerk of the Committee

OUR CULTURAL SOVEREIGNTY

The Second Century of Canadian Broadcasting



House of Commons CANADA June 2003